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**BEFORE THE
SURFACE TRANSPORTATION BOARD**

STB DOCKET NO. AB-515 (Sub-No. 2)

**CENTRAL OREGON & PACIFIC RAILROAD, INC.
ABANDONMENT AND DISCONTINUANCE OF SERVICE
IN COOS, DOUGLAS, AND LANE COUNTIES, OR**

**MOTION FOR BOARD ORDER TO RE-DESIGNATE CERTAIN
INFORMATION CURRENTLY DESIGNATED HIGHLY CONFIDENTIAL
BY THE APPLICANT IN ITS ABANDONMENT APPLICATION**

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July 30, 2008

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The Oregon International Port of Coos Bay ("Port"), by counsel and pursuant to paragraph 10 of the Protective Order in this proceeding and 49 CFR § 1117.1, hereby moves the Surface Transportation Board ("Board" or "STB") to order the Central Oregon & Pacific Railroad, Inc ("CORP") to re-designate certain information in its abandonment application as Confidential or Public instead of Highly Confidential.¹ As the Board is well aware, the Highly Confidential designation means that only outside counsel/consultants can view material that has unilaterally been designated as Highly Confidential by the Applicant. All of CORP's redactions have been labeled Highly Confidential and thus the Port has not been permitted to see this data notwithstanding CORP's statement in its July 24th filing that the Port has seen this data.²

¹ The Port believes that the level of protection of documents discussed herein should also apply to Finance Docket No. 35160, *Oregon International Port of Coos Bay—Feeder Line Application—Coos Bay Line of the Central Oregon & Pacific Railroad, Inc.* and that the Protective Order could be modified to cover both proceedings as long as the designations are appropriately made as discussed herein.

² The assertion that the Port has already seen this data, because outside counsel signed the Highly Confidential Undertaking, is particularly troubling in this abandonment proceeding since the majority of entities interested in this proceeding do not commonly practice before the Board and thus are not familiar with the Board's two-tiered

I. Background

CORP filed an abandonment and discontinuance of service application ("Application") on July 14, 2008 in the above-captioned docket regarding operations over most of the Coos Bay rail line ("Line"). Significant portions of the Application were redacted and designated Highly Confidential by CORP. This has rendered the Public version of the Application merely a series of assertions without data supporting those assertions. Simultaneous with its Application, CORP filed a proposed Protective Order which was issued by the Board the next day, July 15. The Port had serious reservations about the Protective Order because, among other things, it gave credence to CORP's broad brush redactions and on its face was inconsistent with the amount and type of information that was being designated Highly Confidential.³ Because of the short time frames in this proceeding, the Port prepared a Petition for Reconsideration of Decision Granting Protective Order and Motion to Hold Procedural Schedule in Abeyance ("Petition for Reconsideration") which was filed with the Board on July 16, 2008. At the same time, the Port's outside counsel executed the Undertaking from the Protective Order so that a full assessment could be made by counsel of the level and extent of redacted material.

confidentially process which is unlike most court or agency practices to protect confidential material, and which provides that certain material may only be seen by outside counsel/consultants

³ CORP's allegation that the Port "availed itself" of the Protective Order in Finance Docket No. 35130 (Show Cause) and thus the Port cannot object to the Protective Order in this proceeding is incongruous. CORP Response at 4. CORP seems to be saying that because the Port obeyed the terms of the Protective Order sought by CORP in Docket No. 35130, the Port is forbidden from challenging a protective order in any other proceeding. The Port submits that what this actually establishes is that the Port can and will abide by the terms of a Protective Order and that CORP's overly broad Highly Confidential

Upon review of the Highly Confidential version of the Application provided by CORP to the Port's outside counsel, several things immediately became clear. First, all information redacted from the Application was designated Highly Confidential by CORP, meaning that only the Port's outside counsel had access to it. No information was designated Confidential, therefore making paragraph 5 of the Protective Order superfluous. Second, many of CORP's redactions were puzzling because they either included information that is customarily made Public in abandonment proceedings or failed to properly follow the terms of the Protective Order. The result of CORP's redactions was that most of the attachments supporting the Verified Statements were entirely removed from the Public version of the Application with no attempt to limit the redactions to only remove the confidential information, if any, from the attachments.

Together with the redactions in the text of the Application and the Verified Statements, the removal of most attachments means that CORP effectively redacted all or virtually all numeric data regarding traffic volumes, revenues, salvage bids, aggregate Line on-branch and off-branch costs, individual line-item on-branch and off-branch costs, net liquidated value, and avoidable costs. Additionally, CORP also redacted the entirety of its real estate appraisal, including property maps, the comparable real estate sales used, and the extent of CORP's property interest in the rail right-of-way. See Attachment 1 to Verified Statement of Charles Rex, Attachments 1 and 2 to Verified Statement of Patricia Chapman. CORP even redacted the names of most of the shippers on the Line. See Attachment B to the Verified Statement of John Williams.

designation is improper and not consistent with the terms and purpose of the two-tiered protective orders used by the Board.

On July 24, 2008, CORP filed a Response to the Port's Petition for Reconsideration of Decision Granting Protective Order and Motion to Hold Procedural Schedule in Abeyance (filed July 23, 2008) ("CORP Response") CORP stated in a footnote that the Port and CORP had engaged in discussions regarding the designations CORP Response at footnote 3. In the event that the Board might interpret that footnote as a desire of the parties to delay the Board ruling on this important issue and because CORP has not substantively responded to the Port's offer as of the filing of this Motion, the Port is filing this Motion for an Order to Re-Designate the majority of material that CORP has unilaterally designated Highly Confidential in this proceeding

II. CORP Has Abused The Privilege Of Designating Certain Information As Highly Confidential

The Board should be vigilant regarding CORP's efforts to make the key data and information from its Application inaccessible to everyone but outside counsel/consultants who execute the Undertaking from the Protective Order The proposed abandonment of the Coos Bay rail line is a critically important issue for the state, citizens and businesses in a large area of southwestern Oregon. This area is not connected to the national interstate highway system and there is no other rail line on the southern Oregon coast As the Board learned in the Show Cause proceeding, Finance Docket No. 35130, and CORP's Application, the Line is a key component in the local economy because traffic has exceeded 5,000 carloads per year in recent years

Yet, CORP's overly broad redactions would force local shippers, governments, and concerned citizens to hire outside counsel/consultants in order to critically evaluate the Application While the Port obviously does not speak for these other entities, the public should be able to more fully participate in the abandonment process without the

need to hire outside counsel to view information that is customarily available to the public in abandonment cases⁴ In any event, the larger issue is that, as a public agency, the Board's decisions, and the information on which they are based, should be publicly available. Cf 5 USC § 551 et seq Although withholding of sensitive information is and can be appropriate under 49 USC § 11904 and 49 CFR § 1104.14, these redactions should be limited to information that truly raises competitive concerns CORP has not followed this guideline. Instead, it has withheld virtually the entire supporting framework justifying the proposed abandonment.

Recent Board abandonment decisions reveal that much of the information designated as Highly Confidential by CORP is customarily disclosed in railroad filings and Board decisions. *San Joaquin Valley Railroad Company – Abandonment Exemption – In Tulare County, CA*, Docket AB-398 (Sub-No. 7X) (Petition for Exemption filed Feb 19, 2008, Board decision served June 6, 2008), *Union Pacific Railroad Company – Abandonment – In Carver and Scott Counties, MN*, Docket AB-33 (Sub-No 255) (Application filed Dec. 13, 2007; Board decision served April 1, 2008), *Southwestern Railroad Company, Inc. – Abandonment Exemption – In Ellis County, OK, and Lipscomb, Ochiltree, and Hansford Counties, TX*, Docket AB-341 (Sub-No 1X) (Petition for Exemption filed Aug. 2, 2007; Board decision served Nov 20, 2007) In fact, CORP even redacted as Highly Confidential all aggregate numbers, including the net liquidated value, subsidy, total revenue and total costs, which the Board would have to include as

⁴ CORP mentioned on page 9 of its Response to the Port's Petition for Reconsideration (filed July 24, 2008 in this docket) that no party other than the Port's counsel has requested a Highly Confidential version of the Application The fact that no other request may have been made to CORP's counsel is not relevant to whether the designations are appropriate.

part of its public decisions on the abandonment. The Port is perplexed by how the Board could permit this data to remain designated Highly Confidential by CORP and shielded from the public until the Board issued a final decision necessitating its disclosure to the public once a decision has been made in the proceeding.

Furthermore, CORP ignores the circumstances under which the Board “typically” issues protective orders in abandonment and discontinuance proceedings. CORP would have the Board believe that the applicant routinely makes the request. Not so. Typically, a protesting shipper will request a protective order before presenting its own confidential and proprietary traffic and freight expense data. The shipper seeks to submit its own data in order to show that the applicant has understated traffic volumes or revenues on the subject line. But, the shipper does not want to reveal this information to competitors. *Indeed, not one of the decisions cited by CORP on page 5 of its Response involved a railroad filing a protective order in conjunction with filing a notice, an exemption request, or an application to abandon a line.* CORP’s request represents the decided exception, not the rule. As such, the Port stands by its assertion that CORP’s request is peculiar, and that CORP should bear the burden of supporting its request with a verified statement from a managerial level employee or other method to verify the harm that CORP claims from disclosure of information that is required by statute and regulation in abandonment proceedings.

CORP’s suggestion that its information should be given more protection than that of a railroad such as Union Pacific (“UP”) because UP is a “large Class I carrier” is equally perplexing. See CORP’s Response at page 6. Such an assertion of entitlement to differing treatment is not supported in the governing statutes or regulations. Moreover,

CORP's assertion ignores the economy reality of CORP's status as one of dozens of subsidiaries of the much larger RailAmerica, Inc , which itself is owned by a multi-billion dollar asset management firm, Fortress Investment . In fact, Fortress stated that its proposed acquisition of CORP and all of RailAmerica

is intended . to improve RailAmerica's efficiency, financial strength and ability to meet the needs of shippers . In particular, ownership of RailAmerica by RR Acquisition, which is owned by private equity funds that are managed by Fortress (a global investment and asset management firm with \$26 billion of capital under management), is expected to enable RailAmerica to obtain capital at a lower cost than it can today. This, in turn, will enhance RailAmerica's ability to make capital investments in response to future growth in demand for rail services, and enable the RailAmerica Railroads to compete more effectively in the transportation marketplace

Verified Notice of Exemption, filed by Fortress Investment in *Fortress Investment Group LLC, et al – Control Exemption – RailAmerica, Inc , et al* , Docket 34972 at page 4 (filed Dec 1, 2006). See also Application by Fortress Investment Group LLC, et al for Approval of Acquisition of Control of Florida East Coast Railway, LLC, filed by Fortress Investment in *Fortress Investment Group LLC, et al – Control – Florida East Coast Railway, LLC* , Docket 35031 at pages 10-11 and 16-17 (filed May 22, 2007)

III. CORP's Designation Of All Key Information As Highly Confidential Frustrates The Board's Processes

As described below in Section V, the Port's outside counsel has made a good-faith, but unsuccessful, effort to resolve this designation dispute . CORP's Highly Confidential designation for all the underlying data supporting the Application violates the requirement in 49 USC § 10904(b) that detailed information be provided to parties, such as the Port, considering an Offer of Financial Assistance ("OFA"). In two separate letters, as well as during phone conversations, the Port's outside counsel has indicated

that the Port needs access to most of the Highly Confidential information in order to evaluate whether to file an OFA under § 10904. See Exhibit 1 (at page 2) and Exhibit 2, both attached to this Motion. Without access to the data underlying the Application, the Port, or any potential OFA applicant, cannot make a reasoned and intelligent decision regarding the future prospects for rail service on the Line. CORP has clearly and directly violated 49 USC § 10904(b) and 49 CFR § 1152.27(a).

The Board's protective order practices which have been refined most significantly in merger and rate case proceedings and as used by CORP in this proceeding do not square well with the Congressional purpose of the abandonment statute. CORP's position that the requirement to provide information to potential OFA applicants is satisfied whenever the information is provided to the outside counsel of the party considering an OFA cannot be condoned. Such an interpretation is not supported by the language of 49 USC § 10904 or 49 CFR § 1152.27. Moreover, it is highly unlikely that any OFA purchases would occur if the putative purchaser were forced to go into the sale blindly, while only being allowed to rely on undocumented and necessarily vague assertions of its outside counsel. The entity considering the purchase is the one who needs the information for business planning, financial review, and feasibility analysis. Although outside counsel may be intelligent, they will not be the party potentially spending millions of dollars to acquire or subsidize a rail line and the myriad responsibilities that are associated with such an action. Such a prospect cannot be what Congress intended, and would rarely, if ever, result in a successful OFA sale.

The Board should not condone CORP's over-inclusive redactions. Board action is necessary because, right now, CORP is enjoying the benefit of a largely secret

abandonment case while operating under the protection of a Board-issued Protective Order. At the same time, the clock continues to run on the 45-day deadline for Protests and Comments, the 45-day deadline for Offers of Financial Assistance, and the 110-day deadline for an ultimate Board decision regarding the Application. 49 CFR §§ 1152.25 and 1152.26. With virtually all supporting data designated Highly Confidential, the current state of affairs precludes meaningful participation in this case by any individual or entity that does not first hire outside counsel. The Board should order CORP to promptly re-designate previously redacted information so that a proper public proceeding can occur.

IV. Some Of CORP's Highly Confidential Designations Violate The Terms Of The Protective Order

Some of the redactions and Highly Confidential designations by CORP are particularly puzzling because they do not follow the terms of the Protective Order proposed by CORP. For example, CORP has designated as Highly Confidential all on-branch and off-branch costs regarding its operations on the Coos Bay Line. See, e.g., Exhibit 1 to the Abandonment Application; redactions on pages 3-14 of the Verified Statement of Michael Baranowski; Attachments 2 and 3 to the Verified Statement of Michael Baranowski. At most, this information should be Confidential as "confidential financial and cost data" as described in paragraph 1(b) of the Protective Order.⁵ The Port

⁵ As brief explanation, the Port notes that paragraph 1(b) of the Protective Order broadly describes information that is to be labeled both Confidential and Highly Confidential. As is common practice, Paragraph 5 gives a definition of Confidential with no further explanation of the term. On the other hand, Paragraph 6 lists the specific items to be considered Highly Confidential and CORP has, as other parties have in other proceedings, modified this section to fit the particulars of the case. Thus, CORP's failure to include within the Highly Confidential definition, data which it intended to redact as

also notes that aggregate financial data – such as the avoidable loss for the entire Line or the total on-branch costs for the entire Line – is not confidential, has been disclosed in virtually all prior Board abandonment decisions, and should be Public.

There are numerous other examples of designations that appear to conflict with the Protective Order. CORP has designated Highly Confidential the terms of its marketing agreement with Union Pacific (originally, Southern Pacific) even though a reading of paragraphs 1(b), 5, and 6 of the Protective Order reveals that CORP proposed to designate “confidential terms of contracts” as Confidential, not Highly Confidential.

CORP has also designated as Highly Confidential traffic volumes attributed to Line shippers in aggregate form even though “the identification of shippers and receivers in conjunction with shipper-specific or other traffic data” is listed in paragraph 1(b) of the Protective Order, but not paragraph 6. Furthermore, aggregated traffic data is typically Public and only shipper-specific traffic data should be Highly Confidential.

The over-inclusive nature of CORP’s redactions also affects the real estate valuation in the Application. The Verified Statements of Charles Rex and Patricia Chapman, the two witnesses supporting CORP’s real estate valuation, are each roughly two pages in length and say very little. The true support for CORP’s real estate appraisal is found in Attachment 1 to the Rex V S and Attachments 1 and 2 to the Chapman V S, which have all been completely redacted as Highly Confidential. The Port objects to these sweeping redactions of work by a third-party land appraiser and attorney addressing title to land owned by CORP. Moreover, even if the terms of the Protective Order are

Highly Confidential could be interpreted as misleading since the extent of the redactions cannot be discerned from the text of the Protective Order.

completely accepted as written⁶, there is no reasonable interpretation of “confidential information regarding the appraised value of CORP-owned land” that would include the simple nature of CORP’s interest in the land (which is a matter of public record), a map of the right-of-way showing CORP’s interest (also based upon a public record), or a list of recent comparable sales (based upon public records). *Cf Union Pacific Corporation, Union Pacific Railroad Company, and Missouri Pacific Railroad Company – Control and Merger – Southern Pacific Rail Corporation, Southern Pacific Transportation Company, St. Louis Southwestern Railway Company, SPCSL Corp., and the Denver and Rio Grande Western Railroad Company*, Docket 32760 (decision no 39), slip op (served May 31, 1996) (Board upholds ALJ decision making public a UP Board of Directors’ presentation that was previously designated Highly Confidential because the information “is not commercially sensitive in the traditional sense”).

V. The Port Has Made A Good-Faith Effort To Resolve The Designation Dispute

The Port’s outside counsel has made a concerted, good-faith effort to resolve the designation dispute with CORP. See Exhibit 1, letter from the Port’s outside counsel to CORP’s outside counsel (dated July 23, 2008). This letter represents a good-faith effort to resolve the dispute and includes a detailed offer regarding the proposed designation of materials under the terms of the Protective Order. See, e.g., page 2 of Exhibit 1. In addition, the Port’s proposal would have covered all material in this proceeding and in

⁶ As discussed below, the Port offered that CORP could retain certain “confidential information regarding the appraised value of CORP-owned land” as Highly Confidential. However, this material really should all be Public and the Port seeks such an order here.

Finance Docket No 35160 Oregon International Port of Coos Bay—Feeder Line Application—Coos Bay Line of the Central Oregon & Pacific Railroad, Inc.⁷

Counsel has engaged in numerous phone conversations between July 14 and July 25, 2008 and in fact, CORP's counsel was the party to suggest that an agreement could be reached between the parties. However, CORP's counsel has informed Port's counsel that CORP personnel have not yet had time to evaluate the contents of the Port's letter. Furthermore, while CORP's counsel suggested that CORP would only consider the designation of certain material to remain Highly Confidential with a separate agreement between the parties that the Port would nevertheless be permitted to see certain of the Highly Confidential material, CORP is apparently backing away from that suggestion. Thus, the Port's outside counsel spent many hours reviewing all information redacted from CORP's Application in order to provide an item-by-item analysis to CORP, with detailed suggestions for how the designations could be changed to (1) enable the public to meaningfully participate in the abandonment process, (2) comport with Board practice, (3) follow the terms of the Protective Order, (4) meet the Port's needs for participation and consideration of an Offer of Financial Assistance; and (5) protect CORP's commercially sensitive data. See Exhibit 1 (letter to CORP's outside counsel, dated July 23, 2008). A week later, CORP's counsel reports that CORP is not comfortable with the terms suggested by CORP's counsel and that the Port offered to accept as a compromise and that CORP has not even completed a line item discussion about the proposal. In light

⁷ CORP's responses to the Port's discovery in Finance Docket No. 35160 were due on July 28, 2008. CORP has withheld documents responsive to the discovery requests and stated that its position is that the Port is obligated to file a Protective Order request in the feeder line proceeding before CORP will produce the requested material. In light of the inability of the parties to reach an agreement on the designation issues, the Port is seeking a Board resolution to cover both proceedings.

of the time sensitive nature of this proceeding, the Port cannot wait any longer for CORP to respond.

VI. CORP Should Be Ordered To Re-Designate Certain Data Currently Designated Highly Confidential as Public or Confidential

The Port seeks the re-designation of material that either has been traditionally made public in other proceedings or that is traditionally considered Confidential rather than Highly Confidential. The Port does not seek re-designation of certain data currently Highly Confidential such as shipper specific volumes and revenues. For example, the Port does not object to the following shipper specific information remaining Highly Confidential:

- redacted numbers on page 6 of the Application;
- redacted numbers in the tables on pages 21-23 of the Application,
- redactions on pages 3, 4, 13, and 14 of the Verified Statement of John Williams;
- the numbers of carloads shipped per year by shipper in Attachment B of the Verified Statement of John Williams (see below for the rest of the proposed designation of Attachment B); and
- the numbers of carloads originating and terminating by station in Attachment D of the Verified Statement of John Williams (see below for the rest of the proposed designation of Attachment D).

However, the following aggregated shipper traffic information is the type of data traditionally made public and CORP should be ordered to re-designate it as Public

- lines 1-4 of Exhibit 1 of the Abandonment Application;
- page 3 of the Baranowski Verified Statement;
- the names of the shippers and the years in which they shipped traffic in Attachment B of the Verified Statement of John Williams,
- Attachments C and E of the Verified Statement of John Williams, and
- the Station names and years of traffic in Attachment D of John Williams.

The terms of the Protective Order proposed by CORP states that “terms of contracts” will be designated Confidential. Thus, the Cooperative Marketing Agreement (“CMA”) between SP/UP and CORP should be re-designated as Confidential. The terms of the

Protective Order proposed by CORP and imposed by the Board provide various and sufficient protections for CORP and, in fact, the Undertaking that must be signed by any party seeking to view the Confidential Information includes the statement that

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.

CORP's concern with not designating this document as Highly Confidential stems from the fact that the agreement also covers the Siskiyou Subdivision. CORP Response at 6. The Port recognizes that CORP intends, at least to some extent at the current time, to operate the Siskiyou Subdivision on an ongoing basis. While the Port did not object to this agreement being designated Highly Confidential in the *Show Cause Proceeding*, that proceeding occurred prior to CORP actually filing for abandonment of the Coos Bay Line and formalizing its belief that the Coos Bay Line has no going concern value. Thus, if CORP's concern is with the Siskiyou Subdivision information, the appropriate response would have been for CORP to designate the agreement as Confidential and keep as Highly Confidential only the Siskiyou Subdivision information.⁸ Any alleged concern that the disclosure of information related to the Coos Bay Line might provide insight to

⁸ While the Port offered in its July 23rd to agree that certain materials would remain Highly Confidential except that as between CORP and the Port only, the Port would be able to view certain information under the Confidential designation, the Port only offered that in its proposal because CORP's counsel suggested that would be the only way CORP would agree to a re-designation proposal. The Port did not like the solution and withdraws such an idea under this proceeding.

other portions of CORP's system seems only to be an issue because CORP intentionally raised it as an issue in its Response

CORP claims that "public disclosure" of "CORP's parcel-by-parcel appraisal of the value of real property . would be highly prejudicial to CORP because it would inform prospective purchasers of CORP's assessment of the value of the land " CORP Response at 8 Of course, CORP's stated concern addresses the appropriate designation of this material The appraised value of individual parcels of real estate would be provided adequate protection if designated Confidential under the terms of the Protective Order Information included in this category includes pages 8-28 and 48-62 of Attachment 1 to the Rex Verified Statement and Attachments 1 and 2 to the Verified Statement of Patricia Chapman However, there is no justification nor could there be to keep the aggregated information (non-parcel specific) as well as aggregated information regarding the title status of real estate parcels as Highly Confidential or even Confidential Likewise, the the track asset data is based upon an assessment of what physically exists on the Line and on bids that CORP obtained for the asset list provided by CORP This information is not based upon actual sales This information contains publicly available data and/or consists of data that the Board will have to discuss in its decision(s) on the merits of CORP's abandonment Therefore, the information in this category that should be re-designated as Public

- redacted information on page 3 of the Rex Verified Statement,
- pages 1-7 and 29-47 of Attachment 1 to the Rex V S ;
- maps found at Addendum D to Attachment 1 of the Rex V.S ;
- the Verified Statement of Marc Bader; and
- Attachments 1, 2, and 3 of the Verified Statement of Marc Bader

Similarly, aggregated information regarding CORP's operating costs, avoidable costs, on-branch costs, off-branch costs, etc. for the Coos Bay Line should be re-designated

Public This Public information includes

- the redacted avoidable loss on page 2 of the Application;
- the operating income figures on page 5 of the Application (these were already disclosed in the CORP reply in the Show Cause proceeding, docket 35130);
- figures representing CORP's increase in operating expenses for the Line (page 8), and avoidable losses for the Line on pages 2, 8, and 11 of the Application,
- the estimated subsidy payment to keep the Coos Bay line operating (page 20),
- in Exhibit 1, the following information: revenues (lines 1-4 as noted above), total avoidable costs (line 7), total avoidable loss (below line 7), subsidy and NLV information (lines 8-19);
- page 3 of the Baranowski V S (as noted above);
- working capital for the Line (page 9 of Baranowski V S),
- aggregate figures regarding the NLV of the Coos Bay line, including all information from page 10 of the Baranowski V S ,
- total revenue, on-branch costs, off-branch costs, and avoidable costs from pages 13-14 of the Baranowski V.S ,
- the estimated percent increase in Line operating expenses between the Base Year and the Forecast Year (page 14 of the Baranowski V S), and
- opportunity cost chart (attachment 4 of the Baranowski V S)

While the Port does not concede the specific line-item costs of CORP dealing with a rail line that CORP has stated it intends to abandon could harm CORP, the Port asserts that this information can and would sufficiently be protected under the designation of Confidential as "confidential financial and cost data" under Section 1(b) and Section 5 of the Protective Order. Likewise, while Attachment F of the Verified Statement of John Williams appears to contain shipper-specific origination/destination information, along with transportation rates, this information is neither Confidential nor Highly Confidential because it is based on estimated figures not actual data. Nevertheless, the Port asserts that the Confidential designation would appropriately protect this data. Thus, the

material that should be re-designated from Highly Confidential to Confidential information includes

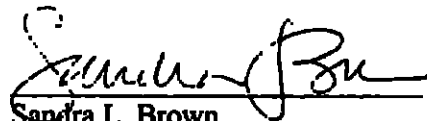
- lines 5(a) to 5(k) and 6(a) to 6(d) of Exhibit 1,
- redactions on pages 4-9 of the Baranowski V.S.;
- Attachment 2 of the Baranowski V S ,
- Attachment 3 of the Baranowski V.S.; and
- Attachment F of the Williams V.S

In sum, CORP seems to overlook that as the party seeking to protect the disclosure of information must show good cause that the *substance* it seeks to protect is proprietary or commercially-sensitive. See e.g. 49 C.F.R. 1114.21(c). CORP failed to make any showing in its Motion for Protective Order regarding the extent of material it intended to designate as Highly Confidential and presented with a second opportunity to make this showing, CORP again failed to even offer a verified statement from a managerial-level employee explaining the special nature of the information and the harm CORP faces from public disclosure—which is not self-evident. On the contrary, as demonstrated above, CORP's designations are highly irregular and depart from abandonment practice. Instead, CORP's Response offers vague assertions of counsel, such as disclosure "would provide *significant insight* into the costs that CORP incurs in operating" other parts of its system. CORP Response at 6. Such an unverified and non-traditional approach to limiting the publicly available information should not be permitted in this abandonment proceeding.

VII. Conclusion

For all the reasons set forth hereinabove, the Board should find that CORP overstepped its privilege for redactions, that CORP's designations frustrate Board processes and violate the terms of the Protective Order and the Board should order CORP to re-designate previously redacted Highly Confidential as Public or Confidential information in accordance with the standards set forth in this Petition

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Sandra L. Brown", written over a horizontal line.

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July 30, 2008

CERTIFICATE OF SERVICE

I hereby certify that on this 30th day of July 2008, I served a copy of the foregoing *Motion For Board Order To Re-Designate Certain Information Currently Designated Highly Confidential By The Applicant In Its Abandonment Application* by e-mail and/or first class mail, postage prepaid, to:

Governor Theodore R. Kulongoski
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Lee Beyer, Chairman
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I have also caused the foregoing to be served by email and/or first class mail, postage prepaid, on all parties who participated in STB Finance Docket No 35130, *Central Oregon & Pacific Railroad, Inc —Coos Bay Rail Line*


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July 23, 2008

Via Email and Hand Delivery

Terence M. Hynes
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Re: Docket No. AB-515 (Sub-No. 2X), *Central Oregon & Pacific Railroad, Inc. – Abandonment and Discontinuance – in Coos, Douglas, and Lane Counties, OR (Coquille to Vaughn)* and Finance Docket No. 35160 *Oregon International Port of Coos Bay—Feeder Line Application—Coos Bay Line of the Central Oregon & Pacific Railroad, Inc.*

Dear Terry

As we have recently discussed, and as set forth in the Petition for Reconsideration of Decision Granting Protective Order and Motion to Hold Procedural Schedule in Abeyance, the Oregon International Port of Coos Bay ("Port") does not agree with the confidentiality designations made by the Central Oregon & Pacific Railroad ("CORP") in its Abandonment Application ("Application") in Docket No. AB-515 (Sub-No. 2X). In particular, the Port notes that CORP has designated significant portions of its Application as Highly Confidential with no information under the Confidential designation which by the terms of CORP's own Protective Order would still provide protection of this information. Moreover, CORP has designated certain material as Highly Confidential which, under the terms of the Protective Order that CORP requested, should actually be designated Confidential.¹

¹ The Port notes that CORP's designations are inconsistent with the terms of the Protective Order submitted by CORP. Section 5 of the Protective Order does not specifically define the documents or information to be designated "Confidential." However, the terms of the Protective Order states that Confidential Information consists of the information which is described in Section 1(b) and then Section 6 more specifically defines what is included in the definition of Highly Confidential. Yet, CORP has designated material Highly Confidential even though it is described as confidential in Section 1(b) but not described in Section 6 (Highly Confidential) which could be interpreted as misleading to the Board as to what would be considered Highly Confidential versus Confidential.

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The Port has undertaken a more thorough review of the Application in order to propose a solution for the protection of any confidential material that would govern both the Application and the Feeder Line Application proceeding in Finance Docket No. 35160 so that both proceedings can move forward without further delay from the withheld information. Despite disagreeing with some of the designations made by CORP, the Port has made every effort to incorporate CORP's confidentiality concerns as you described while devising the solution below. We believe it represents a fair resolution that will appropriately protect confidential information while providing information needed by the Port and other parties to adequately participate in both proceedings dealing with the Coos Bay Line ("Line")

First, while the Port does not necessarily agree that the appraised value of CORP-owned land should remain Highly Confidential or even Confidential as described in Sections 1(b) and 6 of the Protective Order, the Port's offer includes addressing CORP's concern that a "Public" designation of this information might adversely affect CORP's potential land sale efforts for the Line. Additionally, the Port understands that CORP does not want information regarding specific rate and compensation data to become public and the Port has accommodated that request. At the same time, however, the Port needs access to information regarding the Line in order to appropriately respond to the Abandonment Application and to evaluate the Line for a possible Offer of Financial Assistance or Feeder Line purchase. Furthermore, as mentioned above, CORP has incorrectly designated certain material as Highly Confidential when such material should be, and is appropriately protected by, a designation of Confidential.

Therefore, the Port proposes the following resolution:

1 Notwithstanding that CORP's Protective Order language does not adequately make clear that shipper-specific "traffic data" will be designated Highly Confidential, see Section 1(b) compared to Section 6 of the Protective Order, the Port will agree that this information can remain Highly Confidential. However, the names of the shippers, as well the years in which they used rail service, will be Public. Additionally, aggregated information regarding traffic volumes and revenues of the Line will be Public. For example, the following information will be designated Highly Confidential:

- redacted numbers on page 6 of the Application
- redacted numbers in the tables on pages 21-23 of the Application
- redactions on pages 3, 4, 13, and 14 of the Verified Statement of John Williams
- the numbers of carloads shipped per year by shipper in Attachment B of the Verified Statement of John Williams (see below for the rest of the proposed designation of Attachment B)

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- the numbers of carloads originating and terminating by station in Attachment D of the Verified Statement of John Williams (see below for the rest of the proposed designation of Attachment D)

The following aggregated shipper information will be Public:

- lines 1-4 of Exhibit 1 of the Abandonment Application
- page 3 of the Baranowski Verified Statement
- the names of the shippers and the years in which they shipped traffic in Attachment B of the Verified Statement of John Williams
- Attachments C and E of the Verified Statement of John Williams
- the Station names and years of traffic in Attachment D of John Williams

2 The Cooperative Marketing Agreement ("CMA") between SP/UP and CORP will be Confidential, as described in Section 1(b) as compared to Section 6 of the Protective Order ("confidential terms of contracts"). Attachment 3 to the Lundberg V.S. Nevertheless, the specific Handling Carrier Charges received by CORP, as set forth in the CMA and its amendments, will be Highly Confidential in accord with Section 6 of the Protective Order. Additionally, the following information likely fits within the definition of "other compensation between carriers" under Section 6 and the Port is willing for it to remain Highly Confidential:

- the manner in which the handling carrier charge is escalated on an annual basis (see pages 3, 7, 8, etc. of the Application)
- the percent increase in CORP handling charges under the CMA, as stated on page 8 of the Application

However, CORP will agree (and make reasonable efforts to obtain UP agreement if necessary which we do not believe is necessary since whether the CMA is Confidential or Highly Confidential would not have any different impact on the Non-Disclosure, Section 13 of the CMA) that as between CORP and the Port only, the Port will be provided a copy of the entire CMA under the Confidential designation, with only the specific dollar-figure handling charges for the Siskiyou Line redacted.

3 The Port is willing to allow the fuel adjustment percentage received from UP to remain Highly Confidential under Section 6 of the Protective Order. See page 13 of the Baranowski V S. However, CORP must agree that as between CORP and the Port only, the Port will be able to see the fuel adjustment percentage under the Confidential designation.

4 Information regarding the appraised value of individual parcels of real estate will remain

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Highly Confidential as described in Section 6 of the Protective Order, but CORP agrees between CORP and the Port that the Port will be able to view this information under the Confidential designation. Information included in this category would be pages 8-28 and 48-62 of Attachment 1 to the Rex Verified Statement and Attachments 1 and 2 to the Verified Statement of Patricia Chapman. However, aggregated information (non-parcel specific), as well as aggregated information regarding the title status of real estate parcels, will be Public. This Public category includes.

- previously redacted information on page 3 of the Rex Verified Statement
- pages 1-7 and 29-47 of Attachment 1 to the Rex V.S.
- maps found at Addendum D to Attachment 1 of the Rex V.S. (while you raised a concern, we did not locate any notations in these maps that might be Confidential or Highly Confidential. We would consider allowing specific redactions on specific pages to cover such information if CORP can establish the existence of confidential information and a particular harm for each proposed redaction on these maps)

5 Aggregated information regarding CORP's operating costs, avoidable costs, on-branch costs, off-branch costs, etc. for the Coos Bay Line will be Public. This Public information includes.

- the redacted avoidable loss on page 2 of the Application
- the operating income figures on page 5 of the Application (these were already disclosed in the CORP reply in the Show Cause proceeding, docket 35130)
- figures representing CORP's increase in operating expenses for the Line (page 8), and avoidable losses for the Line on pages 2, 8, and 11 of the Application
- the estimated subsidy payment to keep the Coos Bay line operating (page 20)
- in Exhibit 1, the following information: revenues (lines 1-4 as noted above), total avoidable costs (line 7), total avoidable loss (below line 7), subsidy and NLV information (lines 8-19)
- page 3 of the Baranowski V.S. (as noted above)
- working capital for the Line (page 9 of Baranowski V.S.)
- aggregate figures regarding the NLV of the Coos Bay line, including all information from page 10 of the Baranowski V S
- total revenue, on-branch costs, off-branch costs, and avoidable costs from pages 13-14 of the Baranowski V S
- the estimated percent increase in Line operating expenses between the Base Year and the Forecast Year (page 14 of the Baranowski V.S.)
- opportunity cost chart (attachment 4 of the Baranowski V.S)

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6. Specific line-item costs of CORP will be designated Confidential as "confidential financial and cost data" under Section 1(b) and Section 5 of the Protective Order. This Confidential information includes:

- lines 5(a) to 5(k) and 6(a) to 6(d) of Exhibit 1
- redactions on pages 4-9 of the Baranowski V.S.
- Attachment 2 of the Baranowski V.S.
- Attachment 3 of the Baranowski V.S.

7. Other information that does not fall under the categories described in the Protective Order will be designated Public. This Public information includes, but is not limited to the track asset data in

- the Verified Statement of Marc Bader
- Attachments 1, 2, and 3 of the Verified Statement of Marc Bader

8. Regarding the Verified Statement of John Williams, the Port will agree that Attachment F (shipper-specific origination/destination information, along with Mr. Williams' estimation of transportation rates) can remain Highly Confidential as "shipper-specific rate or cost data", under Section 6 of the Protective Order, even though the Port believes this information is neither Confidential nor Highly Confidential because it is based on assumed figures.

9. If disputes arise between CORP and the Port regarding any remaining redacted information currently designated Highly Confidential by CORP and not specifically discussed, the Port and CORP agree to work together to come to a solution that follows the intent of this letter.

We believe the solution described above is more than fair. It allows CORP to retain significant information as Confidential or Highly Confidential, thus providing CORP with the ample protections set forth in Sections 2, 4-9, and 11-16 of the Protective Order. In addition, violations of these protections would provide CORP with the strong remedies described in Exhibits A and B to the Protective Order. The Port also believes this is a fair solution because it protects certain CORP information despite similar information being regularly made public in prior abandonment cases. At the same time, the Port and other parties will be provided a means of appropriate access to relevant information in these proceedings, including from discovery propounded upon CORP by the Port. If CORP is agreeable to these terms, CORP will be required to file an errata or updated Application to provide the material agreed to above that will be Public. In addition, CORP will be required to file an updated Protective Order in AB-515 (Sub-No. 2) that will add a specific mention of Finance Docket No. 35160 in Sections 1(d) and

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11. The Port will simultaneously file a Motion for Protective Order in STB Finance Docket No 35160 similar to the one in the abandonment proceeding with the reciprocal reference to AB-515 (Sub No 2).

Please let me know if you have any questions. Please let me know at your earliest convenience whether your client views this as a workable solution since my goal is to notify the Board as soon as possible that the parties are working toward or have reached a resolution on the protective order issues to cover both proceedings.

Sincerely,

A handwritten signature in black ink, appearing to read "Sandra L. Brown", with a long horizontal flourish extending to the right.

Sandra L. Brown
*Counsel for the Oregon International
Port of Coos Bay*

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July 25, 2008

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Re: Docket No. AB-515 (Sub-No. 2X), *Central Oregon & Pacific Railroad, Inc. – Abandonment and Discontinuance – in Coos, Douglas, and Lane Counties, OR (Coquille to Vaughn)*

Dear Mr. Hynes

In connection with the abandonment filing made by the Central Oregon & Pacific Railroad ("CORP") on July 14, 2008 in the above-captioned docket and the Surface Transportation Board's ("Board") regulations at 49 C.F.R. 1152.27, the Oregon International Port of Coos Bay ("Port") is hereby requesting that CORP promptly provide all information described in 49 U.S.C. § 10904(b) and 49 C.F.R. § 1152.27(a) so that the Port may evaluate whether to file an OFA or offer a subsidy pursuant to the Board's regulations. Please also include copies of all workpapers and other documents, data, materials, information, analysis, or calculations supporting, underlying, explaining, or contradicting the information required to be provided in 49 U.S.C. § 10904(b) and 49 C.F.R. § 1152.27(a).

If you have any questions, please do not hesitate to contact me.

Sincerely,

Sandra L. Brown
Counsel for the Oregon International
Port of Coos Bay