

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

FINANCE DOCKET NO. 35187

224265

**GRAND ELK RAILROAD, L.L.C.—
LEASE AND OPERATION EXEMPTION —
NORFOLK SOUTHERN RAILWAY COMPANY**

FINANCE DOCKET NO. 35188

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**WATCO COMPANIES, INC.—
CONTINUANCE IN CONTROL EXEMPTION —
GRAND ELK RAILROAD, L.L.C.**

JOINT MOTION FOR PROTECTIVE ORDER

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December 29, 2008

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Pursuant to 49 C.F.R. § 1104.14(b), Grand Elk Railroad, LLC ("GER"), Watco Companies, Inc. ("Watco"), and Norfolk Southern Railway Company ("Norfolk Southern" or "NSR") (collectively, "the Parties") respectfully move for the entry of a Protective Order (in the form set forth in Appendix A hereto) in the above-captioned proceedings. The order is required to permit GER, Watco, and NSR to submit to the Board any materials that contain highly sensitive commercial terms, and to make such materials available to outside counsel for interested parties, solely for use in these proceedings.

The requested Protective Order would apply in both of the above-captioned proceedings. In Docket No. 35187, GER, which is a non-carrier subsidiary of Watco, filed a notice of exemption pursuant to 49 C.F.R. § 1150.31 *et seq.* to lease from Norfolk Southern, and to operate, approximately 123 miles of rail line that runs from Grand Rapids, Michigan, via Kalamazoo to a point just outside the Elkhart Yard in Indiana (the "Kalamazoo Branch").

As part of the proposed transaction, GER will also obtain incidental trackage rights over a 0.43-mile segment of the Michigan Main Line to connect the Kalamazoo Branch with Botsford Yard outside Kalamazoo, which GER will lease for train and car handling purposes.

In Docket No. 35188, Watco, a non-carrier, has filed a notice of exemption pursuant to 49 C.F.R. § 1180.2(d)(2), for Watco to continue in control of GER upon GER's becoming a Class III railroad. Watco owns 100 percent of the stock of GER.¹

In the course of these proceedings, the Parties may find it necessary to exchange information that includes (or is based on) proprietary and commercially sensitive information, including shipper-specific traffic data that is protected against public disclosure pursuant to 49 U.S.C. § 11904, proprietary financial data or other confidential information the disclosure of which could have an adverse competitive impact on the Parties themselves or other interested parties. In addition, during the course of these proceedings, the Parties and other interested parties may engage in discovery, or file evidence, that includes (or is based on) such proprietary and commercially sensitive information.

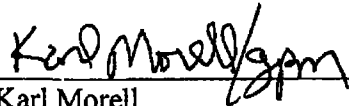
Issuance of a Protective Order will facilitate the discovery process and the exchange of information, and will establish appropriate procedures for the submission of evidence containing proprietary and commercially sensitive information, while protecting such information from unnecessary public disclosure. The proposed Protective Order is modeled substantially on similar orders that the Board has entered in other recent proceedings. *See, e.g., Finance Docket No. 35063, et al., Michigan Central Railway, LLC -- Acquisition and*

¹ The control exemption in Finance Docket No. 35188 became effective on December 3, 2008 - 30 days after Watco filed its notice of exemption. *See* 49 C.F.R. § 1180.4(g); 73 Fed. Reg. 67927-67928. Nonetheless, because that proceeding is related to Finance Docket No. 35187, the Parties have included both proceedings within the scope of their Motion for a Protective Order.

Operation Exemption – Lines of Norfolk Southern Railway Company, Decision served July 27, 2007.

For these reasons, GER, Watco and NSR respectfully request that a Protective Order be entered, in the form set forth in Appendix A to this Motion, including the forms of confidentiality undertakings that accompany it.

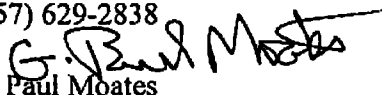
Respectfully submitted,



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APPENDIX A

PROTECTIVE ORDER

1 For purposes of this Protective Order:

(a) "Confidential Documents" means documents and other tangible materials containing or reflecting Confidential Information.

(b) "Confidential Information" means traffic data (including but not limited to waybills, abstracts, study movement sheets, and any documents or computer tapes containing data derived from waybills, abstracts, study movement sheets, or other data bases, and cost work papers); the identification of shippers and receivers in conjunction with shipper-specific or other traffic data; the confidential terms of contracts with shippers or carriers; confidential financial and cost data; 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 STB Finance Docket Nos. 35187 and 35188, and any related proceedings before the Board, and any judicial review proceedings arising from STB Finance Docket Nos. 35187 and 35188 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, discovery response it produces, transcript of a deposition or hearing in which it participates, or 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, except that no prohibition in any subsequent paragraph is applicable to an exchange of information pursuant to paragraphs 2 and 3 of this Protective Order.

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 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, except that no prohibition in any subsequent paragraph is applicable to an exchange of information pursuant to paragraphs 2 and 3 of this Protective Order.

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 Exhibit A to this Protective Order.

5. 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 Protective Order.

6. Any party to these Proceedings may challenge the designation by any other party of information or documents as "CONFIDENTIAL" or as "HIGHLY CONFIDENTIAL" by filing a motion with the Board or with an administrative law judge or other officer to whom authority has been lawfully delegated by the Board to adjudicate such challenges.

7. Designated Material may not be used for any purposes, including without limitation any business, commercial or competitive purposes, other than the preparation and presentation of evidence and argument in STB Finance Docket Nos. 35187 and 35188, any related proceedings before the Board, and/or any judicial review proceedings in connection with STB Finance Docket Nos. 35187 and 35188 and/or with any related proceedings.

8. Any party who receives Designated Material in discovery shall destroy such materials and any notes or documents reflecting such materials (other than file copies of pleadings or other documents filed with the Board and retained by outside counsel for a party to these Proceedings) at the earlier of: (1) such time as the party receiving the materials withdraws from these Proceedings; or (2) the completion of these Proceedings, including any petitions for reconsideration, appeals or remands.

9. No party may include Designated Material in any pleading, brief, discovery request or response, or other document submitted to the Board, unless the pleading or other document is submitted under seal, in a package clearly marked on the outside as "Confidential Materials Subject to Protective Order." See 49 C.F.R. § 1104.14. All pleadings and other documents so submitted shall be kept confidential by the Board and shall not be placed in the public docket in these Proceedings except by order of the Board or of an administrative law judge or other officer in the exercise of authority lawfully delegated by the Board.

10. No party may include Designated Material in any pleading, brief, discovery request or response, or other document submitted to any forum other than this Board in these Proceedings unless: (1) the pleading or other document is submitted under seal in accordance with a protective order that requires the pleading or other document to be kept confidential by that tribunal and not be placed in the public docket in the proceeding; or (2) the pleading or other document is submitted in a sealed package clearly marked, "Confidential Materials Subject to Request for Protective Order," and is accompanied by a motion to that tribunal 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. §§ 11323 or 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.

16. When a Confidential Document or Confidential Information is filed with the Board, the filing party must file simultaneously a public version of any Highly Confidential or Confidential submission filed with the board whether the submission is designated a Highly Confidential Version or Confidential Version. When filing a Highly Confidential Version, the filing party does not need to file a Confidential Version with the Board, but must make available (simultaneously with the party's submission to the Board of its Highly Confidential Version) a Confidential Version reviewable by any other party's in-house counsel. The Confidential Version may be served on other parties in electronic format only. In lieu of preparing a Confidential Version, the filing party may (simultaneously with the party's submission to the Board of its Highly Confidential Version) make available to outside counsel for any other party a list of all "highly confidential" information that must be

redacted from its Highly Confidential Version prior to review by in-house personnel, and outside counsel for any other party must then redact that material from the Highly Confidential Version before permitting any clients to review the submission.

Exhibit A

UNDERTAKING – CONFIDENTIAL MATERIAL

I, _____ have read the Protective Order governing the production and use of Confidential Information and Confidential Documents in STB Finance Docket Nos. 35187 and 35188, 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 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 Nos. 35187 and 35188, any related proceedings before the Surface Transportation Board, and/or any judicial review proceedings in connection with Finance Docket Nos. 35187 and 35188 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 parties producing confidential information or confidential documents shall be entitled to specific performance and injunctive and/or other equitable relief as a remedy for any such breach, and I further agree to waive any requirement for the securing or posting of any bond in connection with such remedy. Such remedy shall not be deemed to be the exclusive remedy for breach of this Undertaking but shall be in addition to all remedies available at law or equity.

Dated:

Exhibit B

UNDERTAKING --HIGHLY CONFIDENTIAL MATERIAL

I, _____ am outside [counsel] [consultant] for _____, for whom I am acting in this proceeding. I have read the Protective Order governing the production and use of Confidential Information and Confidential Documents in STB Finance Docket Nos. 35187 and 35188, 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 Nos. 35187 and 35188, any related proceedings before the Surface Transportation Board, or any judicial review proceedings in connection with Finance Docket Nos. 35187 and 35188 and/or with any related proceedings. I further agree not to disclose any Confidential Information, Confidential Documents, methodologies, techniques, or data obtained pursuant to the Protective Order except to persons who are also bound by the terms of the Order and who have executed undertakings in the form hereof.

I also understand and agree, as a condition precedent to my receiving, reviewing, or using copies of any information or documents designated or stamped as "HIGHLY CONFIDENTIAL," that I will take all necessary steps to assure that said information or documents be kept on a confidential basis by any outside counselor outside consultants working with me, that under no circumstances will I permit access to said materials or information by employees of my client or its subsidiaries, affiliates, or owners, and that at the conclusion of this proceeding (including any proceeding on administrative review, judicial review, or remand), I will promptly destroy any documents containing or reflecting information or documents designated or stamped as "HIGHLY CONFIDENTIAL," other than file copies, kept by outside counsel, of pleadings and other documents filed with the Board.

I understand and agree that money damages would not be a sufficient remedy for breach of this undertaking and that 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.

OUTSIDE [COUNSEL] [CONSULTANT]

Dated: