

SURFACE TRANSPORTATION BOARD

DECISION

STB Docket No. AB-490 (Sub-No. 1X)

GREENVILLE COUNTY ECONOMIC DEVELOPMENT CORPORATION –
ABANDONMENT AND DISCONTINUANCE EXEMPTION – IN GREENVILLE
COUNTY, SC

MOTION FOR PROTECTIVE ORDER

Decided: October 7, 2005

By motion filed on October 3, 2005, Western Carolina Railway Service Corporation (WCRSC) seeks a protective order under 49 CFR 1104.14 to protect confidential documents and information in connection with its forthcoming offer of financial assistance (OFA) in this proceeding.¹ In a pleading filed on October 5, 2005, Greenville County Economic Development Corporation (GCEDC) states that, while it supports WCRSC's preference for keeping non-public financial information confidential, it believes that the proposed protective order is too restrictive, would prejudice GCEDC's ability to protect its interests and would make it difficult for the Board to perform its statutory duties with respect to this and other possible OFAs in this proceeding. Therefore, GCEDC submitted an alternative form of protective order.

A review of WCRSC's submitted protective order supports GCEDC's arguments. For example, under paragraph 2, GCEDC could be restricted from complying with its responsibilities under 49 CFR 1152.27(a) to provide information to other potential offerors. Additionally, under paragraph 3, it appears that both GCEDC, and the Board may not be able to obtain and evaluate WCRSC's financial information. GCEDC's proposed protective order, on the other hand, contains no such restrictions, and is similar to protective orders adopted in other Board proceedings. Good cause exists to grant the motion for a protective order. Accordingly, the motion for protective order will be granted. The Protective Order and Undertaking submitted by GCEDC, and contained in the Appendix to this decision, conforms with the Board's rules at 49 CFR 1104.14. Issuance of the protective order ensures that the railroad's confidential information will be used solely for this proceeding and not for other purposes.

¹ A proposed protective order and undertaking were included with the motion.

It is ordered:

1. The motion for protective order is granted.
2. The parties are directed to comply with the Protective Order in the Appendix to this decision.
3. This decision is effective on its service date.

By the Board, Vernon A. Williams, Secretary.

Vernon A. Williams
Secretary

APPENDIX

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, or carriers; 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” in accordance with paragraph 2 of this Protective Order and any Confidential Information contained in such materials.

(d) “Proceedings” means those before the Surface Transportation Board (Board) concerning any offer of financial assistance filed in STB Docket No. AB-490 (Sub-No. 1X), and any related proceedings before the Board, and any judicial review proceedings arising from STB Docket No. AB-490 (Sub-No. 1X) 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 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. 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.

4. All parties must file simultaneously a public version of any Confidential submission filed with the Board.

5. Any party to these Proceedings may challenge the designation by any other party of information or documents as “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.

6. 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 Docket No. AB-490 (Sub-No. 1X), any related proceedings before the Board, and/or any judicial review proceedings in connection with STB Docket No. AB-490 (Sub-No. 1X) and/or with any related proceedings.

7. Any party who receives Designated Material 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 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.

8. 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 CFR 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.

9. 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.

10. 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.

11. 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.

12. 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.

13. 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 October 7, 2005, governing the production and use of Confidential Information and Confidential Documents in STB Docket No. AB-490 (Sub-No. 1X), 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 STB Docket No. AB-490 (Sub-No. 1X), any related proceedings before the Surface Transportation Board (Board), and/or any judicial review proceedings in connection with STB Docket No. AB-490 (Sub-No. 1X) 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 any party 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.

Signed: _____

Affiliation: _____

Dated: _____