

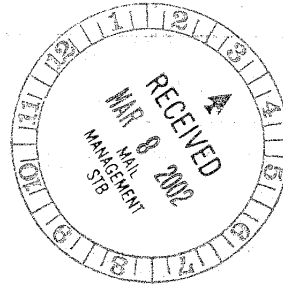
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204930
March 8, 2002



BY HAND DELIVERY

Hon. Vernon Williams
Secretary
Surface Transportation Board
1925 K Street, NW
Washington, D.C. 20423

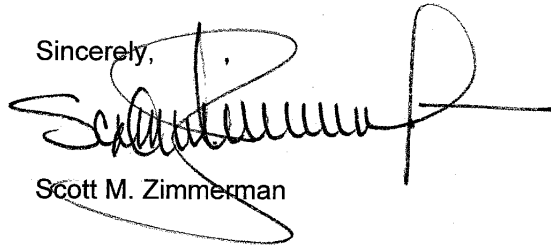
Re: *Capitol Materials Incorporated -- Petition For Declaratory Order -- Certain Rates
And Practices Of Norfolk Southern Railway Company, STB Docket No. 42068.*

Dear Secretary Williams:

Enclosed for filing in this case are the original and 10 copies of Norfolk Southern's Motion For Protective Order. Also enclosed is a 3.5" computer disk containing the text of this pleading in WordPerfect 5.0 format.

Please date-stamp the enclosed two extra copies of the pleading and return them to our messenger. Many thanks for your assistance.

Sincerely,



Scott M. Zimmerman

ENTERED
Office of the Secretary

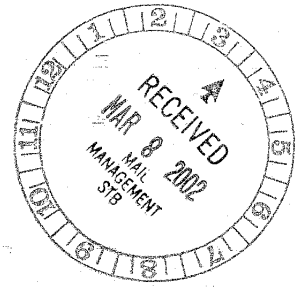
Enclosures

MAR 11 2002

Part of
Public Record

BEFORE THE
SURFACE TRANSPORTATION BOARD

STB Docket No. 42068



CAPITOL MATERIALS INCORPORATED —
PETITION FOR DECLARATORY ORDER – CERTAIN RATES AND
PRACTICES OF NORFOLK SOUTHERN RAILWAY COMPANY

**NORFOLK SOUTHERN'S MOTION
FOR PROTECTIVE ORDER**

Respondent Norfolk Southern Railway Company ("NS") hereby moves the Board to enter a protective order, in the form attached to this motion, to enable the parties to produce certain documents in response to discovery requests in this proceeding and to prevent the improper use and disclosure of such documents.¹

In this proceeding, initiated by a referral from the Superior Court of Fulton County, Georgia, petitioner Capitol Materials, Inc. ("Capitol") seeks a determination of the reasonableness of certain demurrage charges and practices of NS. On February 4, 2002, NS received a Request for Production of Documents from Capitol. On February 19, 2002, NS furnished Capitol with more than 2,100 pages of documents responsive to the document request. NS advised Capitol in the transmittal letter that NS was continuing to investigate whether it has any other documents that are responsive to the

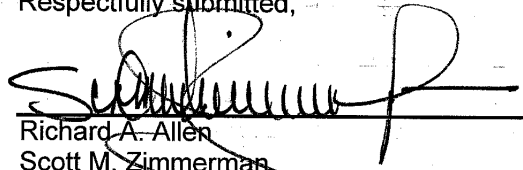
¹ NS transmitted the attached draft protective order to counsel for Capitol for review on February 28, 2002.

request and that can be produced, and NS in fact produced an additional 1,400 pages of documents on March 4. NS also has identified a number of additional documents that are responsive to the requests; many of these documents, however, contain information relating to other shippers the disclosure of which may be restricted by 49 U.S.C. § 10904 unless they are disclosed pursuant to a Board-issued protective order restricting their use and disclosure by the recipients. Attempting to redact information relating to other shippers from the documents would be extraordinarily time-consuming and burdensome.

In other cases, the Board has often issued protective orders of the kind requested here in order to permit the disclosure in response to discovery of documents potentially subject to the restrictions of 49 U.S.C. § 10904. See, e.g., Arizona Electric Power Coop., Inc. v. The Burlington N. and Santa Fe Ry. Co. and Union Pac. Railroad Co., STB Docket No. 42058, 2001 STB LEXIS 145 (Feb. 15, 2001); Public Service Co. of Colorado d/b/a Xcel Energy v. The Burlington N. and Santa Fe Ry. Co., STB Docket No. 42057, 2001 STB LEXIS 55 (Jan. 29, 2001); Texas Municipal Power Agency v. The Burlington N. and Santa Fe Ry. Co., STB Docket No. 42056, 2000 STB LEXIS 659 (Nov. 13, 2000); Railroad Ventures, Inc. – Abandonment Exemption – Between Youngstown, OH and Darlington, PA; The Ohio & Pennsylvania Railroad Co. – Adverse Discontinuance of Service Exemption – Between Youngstown, OH and Darlington PA, STB Docket No. AB-556 (Sub-No. 2X), STB Docket No. AB-555 (Sub-No. 2X), 1999 STB LEXIS 584 (Oct. 12, 1999). NS respectfully requests the Board to issue a protective order in this case for the same purpose. The proposed

protective order attached to this motion is modeled on the protective orders issued in the above-cited cases.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Richard A. Allen", is written over a horizontal line.

Richard A. Allen
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Adam F. Hulbig
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*Attorneys for
Norfolk Southern Railway Company*

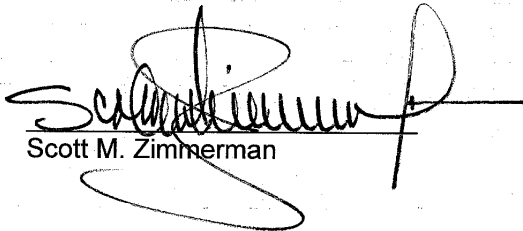
March 8, 2002

CERTIFICATE OF SERVICE

I certify that on March 8, 2002, a true copy of "Norfolk Southern's Motion For Protective Order" was served by first class U.S. mail (postage pre-paid) and by facsimile, upon:

Ira L. Rachelson
Rachelson & White, P.C.
Suite 425, Glenridge Highlands One
5555 Glenridge Connector
Atlanta, Georgia 30342

Bruce E. Mitchell
Mitchell & Associates
3390 Peachtree Road
Suite 520
Atlanta, Georgia 30326



Scott M. Zimmerman

PROPOSED PROTECTIVE ORDER IN STB DOCKET NO. 42068

1. Subject to paragraph 3 below, any party producing material in discovery to another party to this proceeding, or submitting material in pleadings or evidence, that the party believes in good faith reveals proprietary or confidential information, may designate and stamp such material as "CONFIDENTIAL," and such material must be treated as confidential. Such material, any copies thereof, and any data or notes derived therefrom may be disclosed only to employees, counsel, or agents of the party receiving such material who have a need to know, handle, or review the material for purposes of this proceeding and any judicial review proceeding arising therefrom, and only where such employee, counsel, or agent has been given and has read a copy of this Protective Order, agrees to be bound by its terms, and executes the attached Undertaking for Confidential Material prior to receiving access to such materials.
2. Subject to paragraph 3 below, any party producing material in discovery to another party to this proceeding, or submitting material in pleadings or evidence, may in good faith designate and stamp particular material, such as material containing shipper-specific rate, cost or traffic data or other competitively sensitive information, as "HIGHLY CONFIDENTIAL." Material that is so designated may be disclosed only to another party's outside counsel of record in this proceeding, and to those individuals working with or assisting such counsel who are not employed by the party and have a need to know, review, or handle the Highly Confidential material for purposes of the proceeding, including testifying and consulting experts; provided each such person has been given and has read a copy of this Protective Order, agrees to be bound by its terms, and executes the attached Undertaking for Highly Confidential Material prior to receiving access to such materials.
3. Argument and witness testimony is not, in itself, Confidential or Highly Confidential, except to the extent that such argument or testimony reveals any party's Confidential or Highly Confidential data, information, or documentation.
4. Confidential and Highly Confidential material shall be used by a receiving party solely for the purpose of this proceeding and any judicial review proceeding arising therefrom, and not for any other business, commercial, or competitive purpose.
5. Confidential and Highly Confidential material that is not the receiving party's own data, information, or documents must be destroyed by the receiving party, its employees, counsel, and agents, at the completion of this proceeding and any judicial review proceeding arising therefrom, except that: (1) outside counsel (but not outside consultants) for each party are permitted to retain file copies of all pleadings and evidence filed with the Board and file copies of all work product; and (2) in-house counsel for each party are permitted to retain file copies of all pleadings and evidence which he or she received during the course of this proceeding.
6. Confidential and Highly Confidential material, if contained in any pleading or evidence filed with the Board, shall, in order to be kept confidential, be filed only in pleadings or

evidence submitted in a package clearly marked on the outside "Confidential Materials Subject to Protective Order" or "Highly Confidential Materials Subject to Protective Order." See 49 CFR 1104.14.

7. In the event that a party produces material which should have been designated as "CONFIDENTIAL" or "HIGHLY CONFIDENTIAL" and inadvertently fails to stamp the material as "CONFIDENTIAL" or "HIGHLY CONFIDENTIAL," the producing party may notify the other parties in writing within 10 days of discovery of its inadvertent failure to make the confidentiality designation. The parties who received the material without the confidentiality designation will return the non-designated portion or destroy it, as directed by the producing party, or take such other steps as the parties agree to in writing. The producing party will promptly furnish the receiving parties with properly designated material.

8. In the event that a party inadvertently produces material that is protected by the attorney-client privilege, work product doctrine, or any other privilege, the producing party may make a written request within a reasonable time after the producing party discovers the inadvertent disclosure that the other parties return the inadvertently produced privileged document. The parties who received the inadvertently produced document will either return the document to the producing party or destroy the document immediately upon receipt of the written request, as directed by the producing party. By returning or destroying the document, the receiving party is not conceding that the document is privileged and is not waiving its right to later challenge the substantive privilege claim, provided that it may not challenge the privilege claim by arguing that the inadvertent production waived the privilege.

9. If any party intends to use Confidential and/or Highly Confidential material in this proceeding, or in any judicial review proceeding arising therefrom, the party so intending shall submit any proposed exhibits or other documents setting forth or revealing such Confidential and/or Highly Confidential material to any Administrative Law Judge, the Board, or the court, with a written request that the Judge, the Board, or the court: (a) restrict attendance at the hearings during discussion of such Confidential and/or Highly Confidential material; and (b) restrict access to the portion of the record or briefs reflecting discussion of such Confidential and/or Highly Confidential material in accordance with the terms of this Protective Order.

10. If any party intends to use Confidential and/or Highly Confidential material in the course of any deposition in this proceeding, the party so intending shall so advise counsel for the party producing the materials, counsel for the deponent, and all other counsel attending the deposition, and all portions of the deposition at which any such Confidential and/or Highly Confidential material is used shall be restricted to persons who may review the material under this Protective Order. All portions of deposition transcripts and/or exhibits that consist of or disclose Confidential and/or Highly Confidential material shall be kept under seal and treated as Confidential and/or Highly Confidential material in accordance with the terms of this Protective Order.

11. To the extent that material reflecting the terms of contracts, shipper-specific traffic data, other traffic data, or other proprietary information is produced by a party in this or any related proceedings and is held and used by the receiving person in compliance with this Protective Order, such production, disclosure, and use of the material and of the data that the material contains will be deemed essential for the disposition of this and any related proceedings and will not be deemed a violation of 49 U.S.C. 11904.

12. Except for this proceeding, the parties agree that if a party is required by law or order of a governmental or judicial body to release Confidential or Highly Confidential material produced by the other party or copies or notes thereof as to which it obtained access pursuant to this Protective Order, the party so required shall notify the producing party in writing within 3 working days of the determination that the Confidential material, Highly Confidential material, or copies or notes are to be released or within 3 working days prior to such release, whichever is soonest, to permit the producing party to contest the release.

13. All parties must comply with all of the provisions stated in this Protective Order unless good cause, as determined by an Administrative Law Judge decision from which no appeal is taken or by the Board, warrants suspension of any of the provisions herein.

14. Information that is publicly available or obtained outside of this proceeding from a person with a right to disclose it shall not be subject to this Protective Order even if the same information is produced and designated as "CONFIDENTIAL" or "HIGHLY CONFIDENTIAL" in this proceeding.

15. A "CONFIDENTIAL" or "HIGHLY CONFIDENTIAL" designation may be removed by consent of a party who asserts the confidential, proprietary, or commercially sensitive interest, or, absent such consent, by appropriate Order of the Board, or of an Administrative Law Judge from which no appeal is taken, upon application of a party seeking to remove such designation.

UNDERTAKING — CONFIDENTIAL MATERIAL

I, _____, have read the Protective Order served on _____, 2002, governing the production of confidential documents in STB Docket No. 42068, 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 for any purposes other than the preparation and presentation of evidence and argument in STB Docket No. 42068 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.

Name

Dated:

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 _____, 2002, governing the production of confidential documents in STB Docket No. 42068, 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 Docket No. 42068 and any judicial review proceeding arising therefrom, that I will take all necessary steps to assure 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 product 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: _____