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**BEFORE THE
SURFACE TRANSPORTATION BOARD**

FINANCE DOCKET NO. 36631

**LIVONIA, AVON & LAKEVILLE RAILROAD CORPORATION
ACQUISITION OF CONTROL
UNDER 49 C.F.R. § 1180.2(d)(2)**

VERIFIED NOTICE OF EXEMPTION

MOTION FOR PROTECTIVE ORDER

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Dated: July 13, 2022

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Pursuant to 49 C.F.R. § 1104.14(b), the Livonia, Avon and Lakeville Railroad Corporation (“LAL”), hereby requests that the Surface Transportation Board (“STB” or “Board”) issue a protective order allowing the LAL to file certain documents under seal. The LAL is filing concurrently herewith a Acquisition of Control Notice (the “Notice”) related to its acquisition of control of the Ontario Midland Railroad Corporation (“OMID”), which is a Class III railroad that operates in Wayne County and Monroe County, New York. The objective of the transaction is to expand the LAL’s short line partnership with CSX Transportation, Inc. and to increase the LAL’s overall rail footprint. The Notice describes the planned transaction and the LAL’s current control over two other Class III railroads, the Western New York & Pennsylvania Railroad, LLC (“WNYP”) and B&H Rail Corporation (“B&H”).

The LAL has included under seal its terms sheet it has agreed to with the current owners of the shares of OMID that LAL plans to acquire (“Terms Sheet”).¹ This document contains commercially sensitive and confidential terms and information the public release of which could

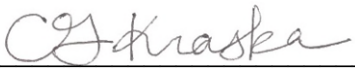
¹ In the Notice, the Terms Sheet is included as Exhibit B.

cause competitive or other injury to the LAL and the sellers. Public disclosure of the documents is not necessary for the consideration or disposition of the Notice.

The LAL also requests that this proposed protective order apply to any other documents filed in this docket by the LAL or any other entities or persons, should the need arise, in particular the Stock Acquisition Agreement that the parties will execute when the transaction is consummated.

The LAL thus requests that the Board accept the documents for filing under seal, and that it adopt the proposed protective order contained in the appendix hereto to govern access to the documents. This approach is consistent with that previously taken by the Board in similar circumstances. See, e.g., Permian Basin Railways, Inc.—Acquisition of Control Exemption – San Luis & Rio Grande Railroad Company, Inc., STB Docket No. FD 34799 (STB served Dec. 23, 2005).

Respectfully submitted,



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Dated: July 13, 2022

APPENDIX

PROTECTIVE ORDER

1. For purposes of this Protective Order, "Confidential Information" means the Terms Sheet, Stock Acquisition Agreement and any other documents containing commercially sensitive or confidential terms and information submitted in STB Finance Docket No. ____.

2. For purposes of this Protective Order, "Highly Confidential Information" means materials that the submitting party in good faith designates as Highly Confidential Information, such as materials containing shipper-specific rate or cost data, or other competitively sensitive information, submitted in STB Finance Docket No. ____.

3. Confidential Information shall be provided to any party only pursuant to this Protective Order and only upon execution and delivery to the LAL of the attached Undertaking for Confidential Material. Confidential Information shall be used solely for the purpose of this and any related Board proceedings, or any judicial review proceeding arising therefrom, and not for any other business, commercial, or competitive purpose.

4. Highly Confidential Information may be disclosed only to outside counsel or outside consultants of the party requesting such materials who have a need to know, handle, or review the materials for purposes of this proceeding and any judicial review proceeding arising herefrom, and only upon execution and delivery to the LAL of the attached Undertaking for Highly Confidential Material prior to receiving access to such materials. Material designated as "Highly Confidential Information" shall be subject to all of the other provisions of this Protective Order.

5. Confidential Information and/or Highly Confidential Information shall not be disclosed in any way or to any person without the written consent of the LAL or an order of the Board, solely for use in connection with this and related Board proceedings, or any judicial review proceeding arising therefrom, provided that such person has been given and has read a copy of this Protective Order and agrees to be bound by its terms by executing the attached Undertaking prior to receiving access to this information.

6. If the Board retains the Confidential Information and/or Highly Confidential Information, it shall, in order to keep it confidential, treat the information in accordance with the procedure set forth at 49 C.F.R. § 1104.14.

7. If any party intends to use Confidential Information and/or Highly Confidential Information at hearings in this proceeding or in any related Board proceedings, or in any judicial review proceeding arising therefrom, the party shall submit any documents setting forth or revealing such Confidential Information to the Board, or the reviewing court as appropriate, under seal, and shall accompany such submission with a written request to the Board or the court

to (i) restrict attendance at the hearing during discussion of such Confidential Information and/or Highly Confidential Information, and (ii) restrict access to the portion of the record or briefs reflecting discussion of such Confidential Information and/or Highly Confidential Information in accordance with the Protective Order.

8. Any party that files with the Board a document containing Confidential Information or Highly Confidential Information must simultaneously file with the Board a public version of that document.

9. All parties must comply with all of the provisions stated in this Protective Order unless good cause, as determined by the Board, is shown by any party to warrant suspension of any of the provisions herein.

UNDERTAKING – CONFIDENTIAL MATERIAL

I, _____, have read the Protective Order governing the filing of the Terms Sheet and Stock Acquisition Agreement by the Livonia, Avon and Lakeville Railroad Corporation (“LAL”), and any other documents containing commercially sensitive or confidential terms and information submitted in STB Finance Docket No. _____ (“Confidential Information”), understand the same, and agree to be bound by its terms. I agree not to use or permit the use of any data or information obtained under this Undertaking, or to use or permit the use of any techniques disclosed or information learned as a result of receiving such data or information, for any purpose other than the preparation and presentation of evidence and argument in STB Docket No. FD _____ or any judicial review proceeding taken or filed in connection therewith. I further agree not to disclose any data or information obtained under this Protective Order to any person who is not also bound by the terms of this Protective Order and has not executed an Undertaking in the form hereof.

Signed: _____

Position: _____

Affiliation: _____

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 _____, 2022, governing the production of confidential documents in STB Docket No. FD _____, understand the same, and agree to be bound by its terms. I further agree not to disclose any data, information or material designated "HIGHLY CONFIDENTIAL" to any person or entity who: (i) is not eligible for access to HIGHLY CONFIDENTIAL material under the terms of the Protective Order, or (ii) has not executed a HIGHLY CONFIDENTIAL undertaking in the form hereof. 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 this proceeding and any judicial review proceeding arising herefrom, 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, and that at the conclusion of this proceeding and any judicial review proceeding arising herefrom, 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 may retain file copies of pleadings filed with the Board. I further understand that I must destroy all notes or other documents containing such highly confidential information 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 parties producing confidential documents shall be entitled to specific performance and injunctive 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: _____