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Office of Proceedings
July 30, 2019
Part of
Public Record

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

DOCKET NO. FD 36319

**TEXAS PACIFICO TRANSPORTATION, LTD.
-- TRACKAGE RIGHTS EXEMPTION --
UNION PACIFIC RAILROAD COMPANY**

**MOTION FOR PROTECTIVE ORDER
OF TEXAS PACIFICO TRANSPORTATION, LTD.**

 GRANTED Office of Proceedings ☐	DECISION ID NO. 47161
	DECIDED DATE 8/8/2019
	SERVED DATE 8/9/2019
	APPROVED: <i>Amir C. Dri</i> Director

TEXAS PACIFICO TRANSPORTATION, LTD.

Jeffrey S. Lisson
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Dated: _____, 2019

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Pursuant to 49 C.F.R. § 1104.14(b), Texas Pacifico Transportation, LTD. ("TXPF") requests that the Board issue a protective order allowing TXPF to file under seal the unredacted trackage rights agreement which is the subject of this proceeding.

Along with this motion, TXPF submitted for filing a notice of exemption pursuant to 49 C.F.R. § 1180.2(d)(7) for TXPF's continued use of overhead trackage rights over approximately 11.18 miles of track of Union Pacific Railroad Company ("UP") between Milepost 608.46 near Alpine, Texas and Milepost 619.64 near Paisano Junction, Texas. TXPF attached a redacted public version of the agreement as Exhibit 2 to its notice of exemption. Concurrently herewith, TXPF is filing the unredacted agreement under seal.

The unredacted agreement contains commercially sensitive and confidential compensation information the public release of which could cause competitive or other injury to TXPF and UP. Public disclosure of the unredacted agreement is not necessary for the consideration or disposition of TXPF's notice of exemption.

TXPF hereby requests that the Board accept the unredacted agreement for filing under seal and adopt a protective order substantially in the form shown in the appendix hereto to govern access to the unredacted agreement. This approach is consistent with that taken by the Board in prior similar circumstances. See, e.g., Soo Line Railroad Company – Trackage Rights Exemption – BNSF Railway Company, FD 36162 (served January 19, 2018); Union Pacific Railroad Company – Trackage Rights Exemptions – BNSF Railway Company, FD 36035 (served June 10, 2018).

WHEREFORE, TXPF respectfully requests that the Board adopt the protective order contained in the appendix hereto.

Respectfully submitted,

Texas Pacifico Transportation, LTD.

By:

A handwritten signature in blue ink, appearing to be 'J. Lisson', written over a horizontal line.

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APPENDIX

PROTECTIVE ORDER

1. For the purposes of this Protective Order, "Confidential Information" means the unredacted trackage rights agreement between Texas Pacific Transportation, LTD. (TXPF) and Union Pacific Railroad Company filed under seal on July 24, 2019, in STB Finance Docket No. 36319.

2. Confidential Information shall be provided to any party only pursuant to this Protective Order and only upon execution and delivery to TXPF of the attached Undertaking. 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 other competitive purpose.

3. Confidential Information shall not be disclosed in any way or to any person without the written consent of TXPF or an order of the Board, and then 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.

4. Any documents containing Confidential Information must be destroyed, and notice of such destruction must be served on TXPF, at the completion of this and any related Board proceedings, or any judicial review proceeding arising therefrom.

5. If any party intends to use Confidential Information at hearings or otherwise in this proceeding or in any related Board proceedings, or in any judicial review proceeding arising therefrom, the party shall submit any filings or 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 any hearing during discussion of such Confidential Information, and (ii) restrict access to the portion of the record or briefs reflecting discussion of such Confidential Information in accordance with the Protective Order.

6. All parties must file simultaneously a public version of any Confidential submission filed with the Board. The Confidential Version may be served on other parties in electronic format only.

7. 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

I, _____, have read the Protective Order governing the filing of Confidential Information by Texas Pacifico Transportation, LTD. (TXPF) in STB Docket No. FD 36319 and 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 Docket No. FD 36319 or any judicial review proceedings 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 order and has executed an Undertaking in the form hereof. 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 Confidential Information, 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 TXPF 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.

Dated: _____

Signature: _____

Position: _____

Affiliation: _____