

BEFORE THE
SURFACE TRANSPORTATION BOARD

ENTERED
Office of Proceedings
March 24, 2020
Part of
Public Record

DOCKET NO. AB-1296X
R. J. CORMAN RAILROAD PROPERTY, LLC –ABANDONMENT
EXEMPTION – IN SCOTT, CAMPBELL, AND ANDERSON
COUNTIES, TENNESSEE

MOTION FOR PROTECTIVE ORDER

Pursuant to 49 CFR §1104.14(b), ARKANSAS-OKLAHOMA
RAILROAD, CO. (“AOK”) respectfully requests that the Board enter a
protective order in the above-referenced proceeding, in the form provided in
Appendix A to this Motion.

AOK filed a Notice of its intent to file an Offer of Financial
Assistance (“OFA”) on March 19, 2020, to purchase the rail line proposed
for abandonment in this proceeding. As a part of that filing, AOK filed as an
attachment an income tax summary document to demonstrate its preliminary
financial responsibility to fund such a purchase. AOK is a private
corporation, and its financial information is highly confidential,
competitively sensitive and commercially sensitive. Issuance of the
protective order will allow the Board to review these materials while
ensuring that sensitive financial information will be protected from
unnecessary public disclosure.

The proposed protective order generally follows the format of protective orders the Board has entered in other recent cases.

WHEREFORE, AOK requests that the Board enter the attached Order.

Respectfully submitted,
ARKANSAS-OKLAHOMA RAILROAD CO.

By: DANIEL A. LaKEMPER
P.O. Box 185
Morton, Illinois 61550
lakemper@mtco.com

Dated: March 23, 2020

CERTIFICATE OF SERVICE

I hereby certify that on March 24, 2020, I served the foregoing document, Notice of Intent to File an Offer of Financial Assistance and Demonstration of Preliminary Financial Responsibility on Catherine S. Wright at cwright@irvinrigsby.com, attorney for R. J. Corman Railroad Property, LLC.

DANIEL A. LaKEMPER

APPENDIX A

PROTECTIVE ORDER

1. Any party producing information, data, documents, or other material (hereinafter collectively referred to as “Material”) in pleadings, or in discovery to another party in this proceeding, that the party in good faith believes reflects proprietary or confidential information, may designate and stamp such material as “CONFIDENTIAL” and such Material must be treated as confidential. Such Material, any copies, and any date or notes derived therefrom:
 - A. Shall be used solely for the purpose of this proceeding and any judicial review proceeding arising herefrom, and not for any other business, commercial, or competitive purpose.
 - B. May be disclosed only to employees, counsel, or agents of the party requesting such Material who have a need to know, handle, or review the Material for purposes of this proceeding and any judicial review proceeding arising herefrom, and only where such employees, 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.
 - C. Must be destroyed by the requesting party, its employees, counsel, and agents, at the completion of this proceeding and any judicial review proceeding arising herefrom. However, counsel and consultants for a party are permitted to retain file copies of all pleadings which they were authorized to review under this Protective Order, including Paragraph 10.
 - D. If contained in any pleading filed with the Board, shall, in order to be kept confidential, be filed only in pleadings submitted in a package clearly marked on the outside “Confidential Materials Subject to Protective Order.” See 49 CFR §1104.4.
2. Any party submitting Material in pleadings, or producing Materials in discovery to another party in this proceeding, may in good faith designate and stamp particular Material, such as Material containing competitively sensitive information, as “HIGHLY CONFIDENTIAL.” If any party wishes to challenge such designation, the party may bring such matter to the attention of the Board. Material that is so designated 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 the purposes of this proceeding and any judicial review proceeding arising herefrom, provided that such outside counsel or outside consultants have been given and have read a copy of this Protective Order, agree to be bound by its terms, and execute the attached Undertaking for Highly Confidential Material prior to receiving access to such Materials. Material

designated as “HIGHLY CONFIDENTIAL” under this provision shall be subject to all of the other provisions of this Protective Order, including without limitation, Paragraph 1.

3. In the event that a party produces Material which should have been designated as “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL” and inadvertently fails to designate the Material as “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL,” the producing party may notify the other party in writing within 5 days of discovery of its inadvertent failure to make the confidentiality designation. The party who received the Material without the confidentiality designation will return the non-designated portion (including any and all copies) 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 party with properly designated Material.
4. 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 party return the inadvertently produced privileged document. The party 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.
5. If any part intends to use “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL” Material at hearings in this proceeding, or in any judicial review proceeding arising herefrom, the party so intending shall submit any proposed exhibits or other documents setting forth or revealing such “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL” Material to the Board, or the Court, as appropriate, with a written request that the Board or the Court: (a) restrict attendance at the hearings during discussion of such “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL” Material; and (b) restrict access to the portion of the record or briefs reflecting discussions of such “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL” Material in accordance with the terms of this Protective Order.
6. If any party intends to use “CONFIDENTIAL” 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” 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” or “HIGHLY CONFIDENTIAL” Material shall be kept under seal and treated as such Material in accordance with the terms of this Protective Order.

7. 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 business days of the determination that such Material is to be released, or within 3 business days prior to such release, whichever is soonest, to permit the producing party the opportunity to contest the release.
8. Information that is publicly available or obtained outside of this proceeding from a person with a right to disclose it publicly 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.
9. Each party has a right to view its own data, information and documentation (i.e., information originally generated or compiled by or for that party), even if that data, information and documentation has been designated as “HIGHLY CONFIDENTIAL” by a producing party, without securing prior permission from the producing party. If a party (the “filing party”) files and serves upon the other party (the “reviewing party”) a pleading or evidence containing the “HIGHLY CONFIDENTIAL” Material of the filing party, the filing party shall also contemporaneously provide to outside counsel for the reviewing party a “CONFIDENTIAL” version of such filing that redacts any “HIGHLY CONFIDENTIAL” information of the filing party that cannot be viewed by the in-house personnel of the reviewing party. Such Confidential Version may be produced in a pdf or other electronic format.
10. Any party filing with the Board a “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL” pleading in this proceeding should simultaneously file a public version of the pleading.

UNDERTAKING

HIGHLY CONFIDENTIAL MATERIAL

As outside [counsel or consultant] for _____, for which I am acting in this proceeding, I have read the Protective Order served on _____, 2020, governing the production of confidential documents in STB Docket No. AB-1296X, 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 and consultants 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: _____