

28551
SEC

SERVICE DATE - NOVEMBER 13, 1997

SURFACE TRANSPORTATION BOARD

DECISION

STB Finance Docket No. 33498

GRAND TRUNK WESTERN RAILROAD INCORPORATED—TRACKAGE RIGHTS
EXEMPTION—ELGIN, JOLIET & EASTERN RAILWAY COMPANY

MOTION FOR PROTECTIVE ORDER

Decided: November 10, 1997

By motion filed November 3, 1997, Grand Trunk Western Railroad Incorporated (GTW) seeks a protective order with respect to a trackage rights agreement (agreement) between GTW and Elgin, Joliet & Eastern Railway Company (EJ&E), by which GTW would obtain non-exclusive overhead trackage rights from EJ&E.

GTW filed a notice of exemption under 49 CFR 1180.2(d)(7) covering trackage rights it proposes to obtain from EJ&E. Parties filing a notice of exemption for trackage rights are required under 49 CFR 1180.4(g)(1)(i) to submit certain information. GTW submits the agreement under 49 CFR 1180.6(a)(7)(ii).

GTW requests that the agreement be kept under seal and not placed in the public docket or otherwise disclosed to the public under 49 CFR 1104.14. GTW notes that the agreement contains proprietary commercial information such as compensation terms, and insurance, liability, and cost allocation provisions. In addition, GTW notes that the provisions of the agreement are commercially sensitive information and that their disclosure to the public could be competitively damaging.

The motion conforms with the Board's rules at 49 CFR 1104.14 governing requests for protective orders to maintain confidentiality. Accordingly, the motion for protective order will be granted.

It is ordered:

1. The motion for protective order is granted. The agreement submitted in STB Finance Docket No. 33498 will be kept under seal and will not be placed in the public docket or otherwise disclosed to the public.

2. The parties to this proceeding must comply with the protective order in the Appendix to the 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 the purposes of this Protective Order, "confidential information" means compensation, liability, and insurance provisions of the trackage rights agreement of Grand Trunk Western Railroad Incorporated (GTW) and Elgin, Joliet & Eastern Railway Company (EJ&E) filed November 3, 1997.

2. The confidential information shall be used 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. The confidential information shall not be disclosed in any way or to any person without the written consent of GTW and EJ&E or an order of the Board, except: to outside counsel or consultants of parties to these proceedings, solely for use in connection with this and any related Board proceedings, or any judicial review proceeding arising therefrom, provided that such outside counsel or consultant has been given and has read a copy of this Protective Order and agrees to be bound by its terms by signing the attached Undertaking prior to receiving access to this information.

4. Any documents containing the confidential information must be destroyed, and notices of such destruction must be served on the Board at the completion of this and any related Board proceedings, or any judicial review proceeding arising therefrom, whichever comes first.

5. If the confidential information is retained by the Board, it shall, in order to be kept confidential, be treated in accordance with the procedure set forth at 49 CFR 1104.14.

6. If any party intends to use the 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 (ii) restrict access to the portion of the record or briefs reflecting discussion of such confidential information in accordance with this Protective Order.

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

Attachment

UNDERTAKING

I, _____, have read the Protective Order governing the filing of confidential information by GTW and EJ&E in STB Finance Docket No. 33498 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 STB Finance Docket No. 33498 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.

I understand and agree that money damages would not be a sufficient remedy for breach of this Undertaking and that GTW and EJ&E 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:

Name:

Position/Affiliation:

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Vernon A. Williams
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2. The confidential information shall be used 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. The confidential information shall not be disclosed in any way or to any person without the written consent of GTW and EJ&E or an order of the Board, except: to outside counsel or consultants of parties to these proceedings, solely for use in connection with this and any related Board proceedings, or any judicial review proceeding arising therefrom, provided that such outside counsel or consultant has been given and has read a copy of this Protective Order and agrees to be bound by its terms by signing the attached Undertaking prior to receiving access to this information.

4. Any documents containing the confidential information must be destroyed, and notices of such destruction must be served on the Board at the completion of this and any related Board proceedings, or any judicial review proceeding arising therefrom, whichever comes first.

5. If the confidential information is retained by the Board, it shall, in order to be kept confidential, be treated in accordance with the procedure set forth at 49 CFR 1104.14.

6. If any party intends to use the 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 (ii) restrict access to the portion of the record or briefs reflecting discussion of such confidential information in accordance with this Protective Order.

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I understand and agree that money damages would not be a sufficient remedy for breach of this Undertaking and that GTW and EJ&E 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:

Name:

Position/Affiliation: