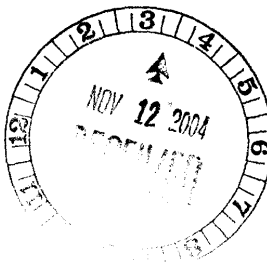


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STEPTOE & JOHNSON ^{LLP}
ATTORNEYS AT LAW

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steptoe.com

EXPEDITED ACTION REQUESTED

VIA HAND DELIVERY

November 12, 2004

ENTERED
Office of Proceedings

NOV 12 2004

Part of
Public Record

Hon. Vernon A. Williams
Secretary
Surface Transportation Board
1925 K Street, N.W.
Washington, DC 20423

**RE: Finance Docket No. 34505, East Brookfield & Spencer Railroad,
LLC – Exemption Lease and Operation – CSX Transportation, Inc.**

Dear Secretary Williams:

Enclosed for filing in the above-captioned docket are the original plus ten copies of East Brookfield & Spencer Railroad's ("EB&SR") Motion for Protective Order, together with a proposed Protective Order and Undertaking.

EB&SR is requesting that the Board take expedited action on this motion as the United Transportation Union ("UTU") has served document production requests upon EB&SR. EB&SR's response to that discovery request is due on November 20, 2004. EB&SR needs the Board to rule on its Motion for Protective Order prior to producing its documents in this proceeding due to the commercially sensitive nature of the documents requested.

Counsel for UTU has reviewed the attached protective order and has authorized me to represent that UTU consents to the entry of the attached protective order.

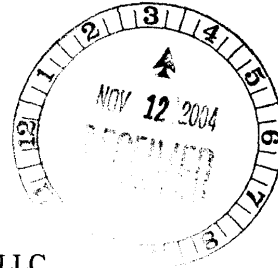
I would appreciate it if you would date-stamp the additional copy of the filing provided and return it to the messenger for our files.

Sincerely,

Betty Jo Christian
Betty Jo Christian
Attorney for East Brookfield &
Spencer Railroad, LLC

BEFORE THE
SURFACE TRANSPORTATION BOARD

FINANCE DOCKET NO. 34505



EAST BROOKFIELD & SPENCER RAILROAD, LLC
--EXEMPTION LEASE AND OPERATION--
CSX TRANSPORTATION, INC.

MOTION FOR PROTECTIVE ORDER

Filed on Behalf of East Brookfield & Spencer Railroad, LLC

By:

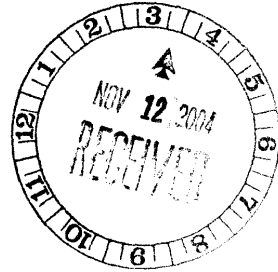
Betty Jo Christian
Scott M. Mirelson
Steptoe & Johnson LLP
1330 Connecticut Avenue, NW
Washington, DC 20036

Date: November 12, 2004

BEFORE THE
SURFACE TRANSPORTATION BOARD

FINANCE DOCKET NO. 34505

EAST BROOKFIELD & SPENCER RAILROAD, LLC
--EXEMPTION LEASE AND OPERATION--
CSX TRANSPORTATION, INC.



MOTION FOR PROTECTIVE ORDER

East Brookfield & Spencer Railroad, LLC ("EB&SR") hereby moves the Board for a protective order pursuant to 49 C.F.R. 1104.14(b). A draft protective order and undertaking are attached to this Motion as Exhibit A.

On October 21, 2004 the United Transportation Union ("UTU") filed a Petition to Revoke the Notice of Exemption filed by EB&SR on May 12, 2004 in this proceeding.¹ In addition to serving its Petition to Revoke on EB&SR, UTU served EB&SR with a discovery request which asked for various documents in connection with the Petition to Revoke.

The documents between EB&SR and CSXT which UTU has requested contain commercially sensitive and proprietary information. In addition, UTU has requested real estate documents relating to the establishment of the automotive ramp served by EB&SR, which also contain commercially sensitive and proprietary information. A public disclosure of such information would be competitively damaging. Accordingly, the proposed protective order is necessary for the facilitation of discovery and subsequent submissions to the Board. The Board has granted motions for protective orders in cases such as this in order to "ensure that the

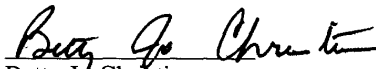
¹ EB&SR filed a Reply to the Petition to Revoke on November 10, 2004.

confidential information contained in the documents produced in discovery will be used only in connection with this proceeding and not for any other business or commercial purpose.”²

EB&SR’s counsel has been authorized by UTU’s counsel to represent that UTU consents to the entry of the attached protective order.

For the reasons stated above, EB&SR respectfully requests that the Board issue a protective order in the form that is attached to this Motion.

Respectfully submitted,



Betty Jo Christian
Scott M. Mirelson
Steptoe & Johnson LLP
1330 Connecticut Avenue, NW
Washington, DC 20036
(202)-429-3000

Attorneys for
East Brookfield & Spencer Railroad, LLC

² *Kaw River R.R., Inc.-Acquisition and Operation Exemption-The Kansas City Southern Ry. Co.*, STB Finance Docket No. 34509, slip op. at 1 (served June 18, 2004); *see also Raritan Central Ry., L.L.C.-Operation Exemption-Heller Industrial Parks, Inc.*, STB Finance Docket No. 34514, slip op. at 1 (served July 28, 2004) (“Issuance of the requested protective order will ensure that confidential information produced in discovery in this proceeding will be used solely for this proceeding and not for other purposes.”).

CERTIFICATE OF SERVICE

I hereby certify that I served a copy of the foregoing Motion for Protective Order on November 12, 2004, via first-class mail, postage prepaid, upon the following:

Daniel R. Elliott, III
Associate General Counsel
United Transportation Union
14600 Detroit Avenue
Cleveland, Ohio 44107-4250

Mark Hoffmann
CSX Intermodal, Inc.
Bellsouth Tower
301 W. Bay Street, 20th Floor
Jacksonville, Florida 32202-4434

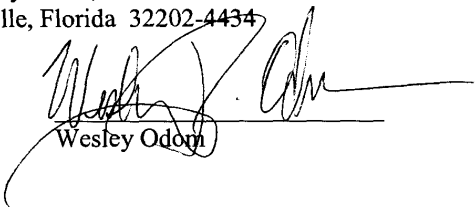

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EXHIBIT A

APPENDIX

PROTECTIVE ORDER

1. If any party to these Proceedings determines that any part of a document it submits, discovery request it propounds, discovery response it produces, transcript of a deposition or hearing in which it participates, or pleading or other paper to be submitted, filed, or served in these Proceedings contains Confidential Information or consists of Confidential Documents, then that party may designate and stamp such Confidential Information and Confidential Documents as "CONFIDENTIAL." Any information or documents designated or stamped as "CONFIDENTIAL" shall be handled as provided for hereinafter.

2. Information and documents designated or stamped as "CONFIDENTIAL" may not be disclosed in any way, directly or indirectly, to any person or entity except to a counsel of a party to these Proceedings, or an employee working directly with such counsel, who, before receiving access to such information or documents, has been given and has read a copy of this Protective Order and has agreed to be bound by its terms by signing a confidentiality undertaking substantially in the form set forth at Attachment A to this Protective Order. A copy of each signed undertaking must be promptly returned to counsel for East Brookfield & Spencer Railroad, LLC.

3. Confidential Material may not be used for any purposes, including without limitation any business, commercial or competitive purposes, other than the preparation and presentation of evidence and argument in STB Finance Docket No. 34505, any related proceedings before the Board, and/or any judicial review proceedings arising therefrom.

4. No party may include Confidential Material in any pleading, brief, discovery request or response, or other document submitted to the Board, unless the pleading or other document is submitted under seal, in a package clearly marked on the outside as "Confidential Materials Subject to Protective Order." See 49 CFR 1104.14. All pleadings and other documents so submitted shall be kept confidential by the Board and shall not be placed in the public docket in these Proceedings except by order of the Board or of an administrative law judge or other officer in the exercise of authority lawfully delegated by the Board.

5. No party may include Confidential Material in any pleading, brief, discovery request or response, or other document submitted to any forum other than this Board in these Proceedings unless: (1) the pleading or other document is submitted under seal in accordance with a protective order that requires the pleading or other document to be kept confidential by that tribunal and not be placed in the public docket in the proceeding, or (2) the pleading or other document is submitted in a sealed package clearly marked, "Confidential Materials Subject to Request for Protective Order," and is accompanied by a motion to that tribunal requesting issuance of a protective order that would require the pleading or other document be kept confidential and not be placed in the public docket in the proceeding, and requesting that if the motion for protective order is not issued by that tribunal, the pleading or other document be returned to the filing party.

6. No party may present or otherwise use any Confidential Material at a Board hearing in these Proceedings, unless that party has previously submitted, under seal, all proposed exhibits and other documents containing or reflecting such Confidential Material to the Board, to an administrative law judge or to another officer to whom relevant authority has been lawfully delegated by the Board, and has accompanied such submission with a written request that the Board, administrative law judge or other officer: (a) restrict attendance at the hearing during any discussion of such Confidential Material, and (b) restrict access to any portion of the record or briefs reflecting discussion of such Confidential Material in accordance with this Protective Order.

7. If any party intends to use any Confidential Material in the course of any deposition in these Proceedings, that party shall so advise counsel for the party producing the Confidential Material, counsel for the deponent, and all other counsel attending the deposition. Attendance at any portion of the deposition at which any Confidential Material is used or discussed shall be restricted to persons who may review that material under the terms of this Protective Order. All portions of deposition transcripts or exhibits that consist of, refer to, or otherwise disclose Confidential Material shall be filed under seal and be otherwise handled as provided in paragraph 8 of this Protective Order.

8. Any party who received Confidential Material in discovery shall destroy such materials and any notes or documents reflecting such materials (other than file copies of pleadings or other documents filed with the Board and retained by counsel for a party to these Proceedings) at the earliest of: (1) such time as the party receiving the materials withdraws from these Proceedings, or (2) the completion of these Proceedings, including any petitions for reconsideration, appeals or remands.

9. All parties must comply with all of the provisions of this Protective Order unless the Board or an administrative law judge or other officer exercising authority lawfully delegated by the Board determines that good cause has been shown warranting suspension of any of the provisions herein.

10. Nothing in this Protective Order restricts the right of any party to disclose voluntarily any Confidential Information originated by that party, or to disclose voluntarily any Confidential Documents originated by that party, if such Confidential Information or Confidential Documents do not contain or reflect any Confidential Information originated by any other party.

Attachment A

UNDERTAKING-CONFIDENTIAL MATERIAL

I, _____, have read the Protective Order served on _____, 2004, governing the production and use of Confidential Information and Confidential Documents in STB Finance Docket No. 34505, understand the same, and agree to be bound by its terms. I agree not to use or to permit the use of any Confidential Information or Confidential Documents obtained pursuant to that Protective Order, or to use or to permit the use of any methodologies or 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. 34505, and any related proceedings. I further agree not to disclose any Confidential Information, Confidential Documents, methodologies, techniques, or data obtained pursuant to the Protective Order except to persons who are also bound by the terms of the Order and who have executed Undertakings in the form hereof, and that 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 materials designated or stamped as "CONFIDENTIAL," other than file copies, kept by 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 Applicants or other parties producing Confidential Information or Confidential Documents shall be entitled to specific performance and injunctive and/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.

Signed: _____

Dated: _____