

SURFACE TRANSPORTATION BOARD

DECISION

Docket No. FD 35952

GREAT LAKES BASIN TRANSPORTATION, INC.—RAIL CONSTRUCTION AND OPERATION—IN ROCK COUNTY, WISC., WINNEBAGO, OGLE, LEE, LASALLE, GRUNDY, AND KANKAKEE COUNTIES, ILL., AND LAKE AND PORTER COUNTIES, IND.

Digest:<sup>1</sup> This case concerns an application for a rail construction and operation project in the states of Wisconsin, Illinois, and Indiana proposed by Great Lakes Basin Transportation, Inc. (GLBT). This decision directs GLBT to supplement its application, suspends the deadlines in the Board’s rules for comments and replies on the transportation merits of the application, grants with modifications a motion for protective order filed by GLBT, rejects GLBT’s designation of the list of its 10 principal stockholders and their respective holdings as “highly confidential,” addresses a request for extension of time, and clarifies the service requirements in this proceeding.

Decided: June 2, 2017

On May 1, 2017, Great Lakes Basin Transportation, Inc. (GLBT), filed an application, pursuant to 49 U.S.C. § 10901 and 49 C.F.R §§ 1150.1-10, seeking authority from the Board to construct and operate an approximately 261-mile rail line (the Line).<sup>2</sup> According to GLBT, the proposed rail line would extend around the Chicago, Ill. area at a distance of 38 to 89 miles from downtown and pass through counties in Wisconsin, Illinois, and Indiana.

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<sup>1</sup> The digest constitutes no part of the decision of the Board but has been prepared for the convenience of the reader. It may not be cited to or relied upon as precedent. Policy Statement on Plain Language Digests in Decisions, EP 696 (STB served Sept. 2, 2010).

<sup>2</sup> The Board’s review of construction applications is governed by 49 U.S.C. § 10901 and its regulations at 49 C.F.R. §§ 1150.1-10 and by the requirements of the National Environmental Policy Act, 42 U.S.C. §§ 4321-4370h (NEPA), and related environmental laws. The Board’s review of proposed constructions thus includes consideration of both the transportation merits of the project and the results of the environmental review process. The environmental review process, which is undertaken by the Board’s Office of Environmental Analysis (OEA), is separate from the Board’s consideration of comments on the transportation merits and proceeds under a separate schedule. As is typically done in construction proceedings, preliminary work on the environmental review was initiated prior to the filing of the application. Information concerning the environmental review can be found on the project website at <http://www.greatlakesbasinraileis.com/>.

For the reasons discussed below, the Board directs GLBT to supplement its application, tolls the deadlines imposed by the Board’s regulations for comments and replies on the transportation merits of the application, grants with modifications a motion for protective order filed by GLBT, rejects GLBT’s designation of the list of its 10 principal stockholders and their respective holdings as “highly confidential,” addresses a pending request for extension of time to reply to the motion for protective order and to the application, and clarifies the service requirements in this proceeding.

## BACKGROUND

In its application, GLBT explains that the purpose of the new rail line would be to allow rail traffic to bypass the Chicago area. GLBT states that the Line would be completely grade separated from major intersecting rail lines and major highways. GLBT further states that the Line would interchange with each major rail line operated by the six Class I railroads serving Chicago, along with six regional railroads at a total of 26 potential points of interchange.<sup>3</sup> According to GLBT, the Line would permit a train to travel between any two of those points of interchange in eight hours or less. GLBT further states that construction of the Line would create new capacity, permitting up to 110 trains per day to bypass the existing Chicago terminal and allowing the existing rail infrastructure to move freight and passenger trains originating and terminating in Chicago more efficiently and reliably.

Concurrent with its application, GLBT filed a motion for protective order to govern the exchange and use of confidential information contained in filings in the proceeding. GLBT also filed under seal a list of GLBT’s 10 principal stockholders and their respective holdings—information specifically required by the Board’s regulations at 49 C.F.R. § 1150.3(f). GLBT argues that the list of shareholders contains proprietary and commercially sensitive information and confidential personal information, the disclosure of which could have an adverse impact on GLBT and its principals.

On May 3, 2017, a letter requesting a 55-day extension for written comments on GLBT’s application and a 15-day extension to reply to GLBT’s motion for protective order was filed by Block GLB Railroad, LaSalle County, IL; Rock Against the Rail, LLC; Kankakee County, IL Block GLB; RAILED; Citizens Against the GLB Railroad, Boone County, IL; and Winnebago County Against the GLB Railroad (collectively, the Opposition Groups). The motion was joined by the Illinois Agricultural Association a/k/a the Illinois Farm Bureau (along with the Farm Bureaus of Grundy, Kankakee, LaSalle, Lee, Ogle, and Winnebago-Boone counties) on May 10, 2017, and by the Environmental Law & Policy Center (ELPC) on May 18, 2017. On May 19, 2017, Norfolk Southern Railway Company filed a letter of intent to participate in the proceeding, in which it also noted that it does not object to the requests for extension of time.

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<sup>3</sup> GLBT states that the number of interchange points is based on GLBT Preferred Route Two, which GLBT submitted to OEA on September 20, 2016.

On May 9, 2017, the Director of the Board’s Office of Proceedings issued an order establishing procedures for the service of filings on the transportation merits in the proceeding. The Opposition Groups filed a request for clarification of that order on May 17, 2017. Specifically, the Opposition Groups request clarification on whether individual private citizens who send short letters or statements to the Board opposing or favoring the application or motion for protective order become parties of record who must be served with copies of more formal pleadings filed with the Board by citizen organizations such as the Opposition Groups, governmental agencies, or any other entity.

On May 10, 2017, the Opposition Groups filed a reply to GLBT’s motion for protective order. The Opposition Groups request that the Board deny GLBT’s motion for protective order or, at a minimum, reclassify the identities and shareholdings of the 10 principal stockholders of GLBT from “highly confidential” to “confidential.” According to the Opposition Groups, “highly confidential” treatment of this information is unnecessarily restrictive. The Opposition Groups argue that they must be able to freely circulate evidence to determine whether they may have information to rebut GLBT’s assertions. They further argue that they are wary of secretive treatment of evidence that would require them to sign complex undertakings, especially given GLBT’s prior “inconsistent actions and misleading statements.”

On May 22, 2017, additional replies in opposition to GLBT’s motion for protective order were filed by ELPC and, jointly, by Openlands and the Sierra Club, Illinois Chapter (collectively, the Public Interest Organizations). In their replies, ELPC and the Public Interest Organizations argue that the identity and holdings of GLBT’s 10 principal shareholders should be publicly disclosed, the identity of specific customers and potential customers should not be confidential, and the prohibition on access to “highly confidential” information by in-house counsel and staff is inappropriate for non-commercial organizations that are not represented by outside counsel.

The Board has also received numerous comments filed by individual private citizens, local and state officials, and U.S. Representatives Robin Kelly and Adam Kinzinger of Illinois.

## DISCUSSION AND CONCLUSIONS

Supplemental Information. The Board has reviewed GLBT’s application and finds several deficiencies. GLBT will be given an opportunity to correct the deficiencies by submitting the supplemental information set forth below by June 22, 2017.<sup>4</sup>

(1) Corrected list of counties and cities to be served. Under 49 C.F.R. § 1150.4(e), applicants are required to provide a list of the counties and cities to be served under the proposal, and whether there is other rail service available to them. GLBT provided a list of counties to be

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<sup>4</sup> See, e.g., Tongue River R.R.—Rail Constr. & Operation—in Custer, Powder River & Rosebud Ctys., Mont. (Tongue River I—Reopened), FD 30186, slip op. at 3 (STB served Nov. 1, 2012) (directing the applicant to supplement its construction and operation application to provide a sufficient record for the Board’s review).

served; however, the list does not include the cities to be served, as required by the Board's regulations. Additionally, the list appears to omit one county that would be served by the Line. Specifically, the list of counties does not include La Porte County, Ind., although the map GLBT provides as Exhibit C to its application indicates that the Line enters into and ends in La Porte County. (See GLBT Appl. 11, 23.) Accordingly, GLBT is directed to file a corrected and complete list that includes both the counties and cities to be served under the proposal.

(2) Exhibits E and F. Under 49 C.F.R. § 1150.6(b), applicants are required to include with their application a recent balance sheet as Exhibit E and an income statement for the latest available calendar year prior to filing the application as Exhibit F. Exhibits E and F provide information relevant to the Board and other interested parties about the proposed project. GLBT did not provide either exhibit with its application. It claims that “[b]ecause GLBT has no business operations or revenue, it is not filing a current balance sheet or income statement.” (GLBT Appl. 15; see also *id.* at 46.) However, an income statement and balance sheet would include revenue, expenses, assets, and liabilities; and based on its application, GLBT has likely incurred liabilities that would be captured in these exhibits. For example, GLBT states that it has retained a third-party contractor pursuant to 49 C.F.R. § 1105.10(d) to work with OEA staff to prepare an Environmental Impact Statement pursuant to NEPA. (*Id.* at 16.) Because this information is an important component of the application, GLBT is directed to file Exhibits E and F. Any outstanding liabilities related to the proceeding should be included in these exhibits along with any assets of GLBT.

(3) Certification of the application. Under 49 C.F.R. § 1150.10(c), applications must be made under oath and contain an appropriate certification (if a corporation, by its secretary) showing that the affiant is duly authorized to verify and file the application. No such certification was included with GLBT's application. GLBT is directed to file the appropriate certification.

(4) Certification of service required under 49 C.F.R. § 1150.10(e) and affidavit confirming publication required under 49 C.F.R. § 1150.10(f). Under § 1150.10(e), applicants are required to serve a copy of their application by first-class mail upon the Governor (or Executive Officer), Public Service Board, and Department of Transportation of each state in which any part of the properties involved in the proposed transaction is located, and within two weeks of filing, submit to the Board a copy of the certificate of service indicating that all persons so designated have been served. Additionally, under § 1150.10(f), within two weeks of filing, applicants are required to publish a summary of the application (prepared under § 1150.9) in a newspaper of general circulation in each county in which the line is to be located and must file with the Board an affidavit of such publication immediately after the publication has been completed. To date, GLBT has not filed the required certification of service or affidavit of publication. Accordingly, GLBT is directed to comply with the requirements of § 1150.10(e) and (f) and supplement its application with the required documents.

Deadlines for Comments. Under 49 C.F.R. §§ 1150.10(g) and (h), comments on GLBT's application would be due 35 days after its May 1, 2017 filing date, and GLBT's reply would be due 5 days after the comment deadline. Given the need for GLBT to file supplemental information, the Board will toll the deadlines for comments and replies on the transportation

merits of the application imposed by the Board's regulations. If, after receiving the supplemental information requested of GLBT, the Board publishes notice of the application in the Federal Register pursuant to 49 C.F.R. § 1150.10(f), the Board would then issue a procedural schedule<sup>5</sup> establishing new deadlines for comments and replies addressing the transportation merits of the application.<sup>6</sup> In doing so, the Board would address the request for a 55-day extension for comments and replies.

Motion for Protective Order. The Board will grant GLBT's motion for protective order with modifications. The Board will issue here a protective order to govern the exchange and use of confidential information in this proceeding. Issuance of the protective order will ensure that confidential information will be used solely for this proceeding and not for other purposes.

However, the Board will make two modifications to the protective order proposed by GLBT. First, the Board will modify Paragraph 1(b) of the protective order by replacing the language "the identification of specific customers or potential customers" with "the identification of shippers and receivers in conjunction with shipper-specific or other traffic data." As the ELPC and Public Interest Organizations note in their replies to the motion for protective order, the "identification of specific customers or potential customers" alone is not sensitive or proprietary information. The replacement language above is commonly used in Board protective orders, and indeed was used in the protective orders in both cases GLBT cited in support of its motion for protective order, including one prior construction application case. (See GLBT Mot. for Protective Order 3 (citing Ohio River Partners, LLC—Acquis. & Operation Exemption—Hannibal Dev., LLC, FD 35984 (STB served Jan. 13, 2016); Tongue River I—Reopened, FD 30186 (STB served Aug. 27, 2013).)

Second, the Board will modify Paragraph 5 of the protective order to allow in-house counsel for ELPC and the Public Interest Organizations to review material designated "highly confidential," provided that the in-house counsel of these organizations execute the appropriate undertaking and otherwise abide by the terms of the protective order. Where appropriate, the Board has modified protective orders to allow in-house counsel for non-commercial parties not represented by outside counsel to review material designated "highly confidential."<sup>7</sup> ELPC and

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<sup>5</sup> As noted, supra note 2, the environmental review process for rail construction projects proceeds under a separate schedule.

<sup>6</sup> Where appropriate, the Board has previously extended the procedural schedule in rail construction cases. See Tongue River I—Reopened, FD 30186, slip op. at 3 (STB served Nov. 1, 2012); U.S. Dep't of Energy—Rail Constr. & Operation—Caliente Rail Line in Lincoln, Nye, & Esmeralda Ctys., Nev., FD 35106 (STB served Apr. 11, 2008).

<sup>7</sup> See Burlington N. & Burlington N. R.R.—Control & Merger—Santa Fe Pac. Corp., & the Atchison, Topeka & Santa Fe Ry. (Burlington N.—Control & Merger), FD 32549, slip op. at 2 (ICC served Mar. 13, 1995) (modifying the protective order in that proceeding to allow in-house counsel for a labor organization or other non-commercial party that was not represented by outside counsel to review material designated "highly confidential"). Compare Burlington N.—Control & Merger, FD 32549, slip op. at 2 (ICC served May 3, 1995) (denying a similar modification sought by entities with which applicants had "arms-length business relationships"

(continued . . . )

the Public Interest Organizations are public interest organizations that are not represented by outside counsel and have no commercial interest in the confidential information that may be disclosed during this proceeding. There is no evidence that ELPC or the Public Interest Organizations ever had, or are likely to have in the future, arms-length business relationships with GLBT. However, in accordance with Board precedent, this modification extends only to the in-house counsel of ELPC and the Public Interest Organizations, not to any other officers, directors, or employees of those organizations.

Attached as Appendix A to this decision is a copy of the protective order that will govern the exchange and use of confidential information in this proceeding.<sup>8</sup> Because the Board is issuing a protective order with this decision, the request for a 15-day extension to reply to GLBT's motion for protective order is now moot.

Highly Confidential Designation. The Board rejects GLBT's designation of Appendix 2 of its application, which lists GLBT's 10 principal stockholders and their respective holdings, as "highly confidential." To obtain confidential status, a party must do more than simply assert a desire to keep a document confidential. Stagecoach Group, PLC & Coach USA, Inc., et al.—Acquis. of Control—Twin Am., LLC, MC-F 21035, slip op. at 6 (STB served Feb. 8, 2011). Here, GLBT has provided nothing more than an unsupported assertion that the list of shareholders "contains proprietary and commercially sensitive information and confidential personal information," the disclosure of which "could" have an adverse impact on GLBT or its principals. GLBT provides no justification for why the information it seeks to protect—specifically, the shareholders' names and the percentages of GLBT stock held—is "highly confidential" or even "confidential." It does not explain why the information is sensitive or how public disclosure of this information could negatively impact GLBT or its principals.<sup>9</sup> Moreover, this information has been included as public information in past construction

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( . . . continued)

because the sought modification "could adversely affect the primary applicants' future business dealings with those entities").

<sup>8</sup> The protective order discussed in this decision does not govern the release of Board Waybill Data. Any release of Board Waybill Data would be governed by the Board's rules at 49 C.F.R. § 1244.9.

<sup>9</sup> In a prior construction proceeding, the Board granted a motion for protective order protecting the confidential personal financial information of two principals and shareholders that was contained in verified statements. See New Eng. Transrail, LLC, dba Wilmington & Woburn Terminal Ry.—Constr., Acquis. & Operation Exemption—in Wilmington & Woburn, Mass. (New Eng. Transrail), FD 34797, slip op. at 1 (STB served Oct. 1, 2007). However, the names and holdings of those individuals were not protected. The information redacted as confidential personal information in New England Transrail included the dollar value of equity invested by the individual shareholder and the shareholder's anticipated borrowing limit from commercial lending institutions. (See New Eng. Transrail, LLC, Submission of Supplemental Info. Requested by the Board Exs. J & K, Aug. 9, 2007, New Eng. Transrail, FD 34797.) That type of information, however, is not part of Appendix 2 here.

application cases. (See Tongue River R.R. Suppl. Appl. for Constr. & Operation Authority 13, Dec. 18, 2012, Tongue River I—Reopened, FD 30186; Dakota, Minnesota & E. R.R. Appl. for Constr. & Operation Authority Volume 1 at 12, Feb. 20, 1998, DM&E, FD 33407.) Accordingly, GLBT is directed to file a public, unredacted version of the list of its 10 principal stockholders and their respective holdings by June 9, 2017.

Clarification of Service Requirements. In its May 9, 2017 order, the Board’s Director of the Office of Proceedings waived the service requirements of 49 C.F.R. § 1104.12(a), which require every document filed with the Board to be served upon all parties to the proceeding, and 49 C.F.R. § 1150.10(g), which require each comment filed in application proceedings under 49 U.S.C. § 10901 to be served on the applicant, for individual private citizens who wish to file comments on the transportation merits of the application. The Board’s decision stated that all other parties of record, including citizen organizations, are expected to comply with the Board’s service requirement regulations and serve comments on the transportation merits of the proposed project on all parties of record listed on the Board’s service list for this proceeding.

On May 17, 2017, the Opposition Groups requested clarification on whether individual private citizens who send short letters or statements to the Board opposing or favoring the application or motion for protective order (and as a result, become parties of record) must be served with copies of more formal pleadings filed with the Board by citizen organizations such as the Opposition Groups, governmental agencies, or other entities that file substantive pleadings in favor of, or in opposition to, the application or motion for protective order.

The Board grants the Opposition Groups request for clarification of the Board’s May 9, 2017 order. The Board agrees with the Opposition Groups that, given the substantial number of parties of record in this proceeding, it would be costly and burdensome for entities filing substantive pleadings to be required to serve all parties of record. Therefore, the Board clarifies that the following service requirements will apply to this proceeding:

- In accordance with its May 9, 2017 decision, individual private citizens must file with the Board only. Individual private citizens are not required to serve any party of record.
- All other parties of record must serve the applicant only.<sup>10</sup>
- The applicant need not serve any party of record, except if the applicant is filing a reply to a motion or other request for relief filed by a party of record, then the applicant must also serve its reply on the moving party.

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<sup>10</sup> Because entities are required to serve the applicant only, the request for a waiver from the service requirements filed by the Public Interest Organizations is now moot.

It is ordered:

1. GLBT is directed to file the supplemental information requested in this decision by June 22, 2017.
2. The deadlines imposed by our regulations for comments on the transportation merits of the application and replies to such comments are tolled pending a subsequent order of the Board.
3. GLBT's motion for protective order is granted with modifications as discussed above.
4. Appendix 2 of GLBT's application is designated public. GLBT is directed to file an unredacted version of the appendix by June 9, 2017.
5. The Board clarifies the service requirements for this proceeding as discussed above.
6. This decision is effective on its date of service.

By the Board, Board Members Begeman, Elliott, and Miller.



## APPENDIX A

### PROTECTIVE ORDER

1. For purposes of this Protective Order:
  - (b) “Confidential Documents” means documents and other tangible materials containing or reflecting Confidential Information.
  - (c) “Confidential Information” means traffic data (including but not limited to waybills, abstracts, study movement sheets, market studies, and any documents or computer tapes containing data derived from waybills, abstracts, study movement sheets, or other data bases, and cost work papers); the identification of shippers and receivers in conjunction with shipper-specific or other traffic data; the confidential terms of contracts with customers, suppliers, carriers or other entities; confidential financial and cost information; and other confidential or proprietary business or personal information.
  - (d) “Designated Material” means any documents designated or stamped as “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL” in accordance with Paragraph 2 or 3 of this Protective Order and any Confidential Information contained in such materials.
  - (e) “Proceedings” means those before the Surface Transportation Board (“Board”) concerning the Application to Construct and Operate a Railroad Line filed in Docket No. FD 35952 and any related proceedings before the Board, and any judicial review proceedings arising from Docket No. FD 35952, or from any related proceedings before the Board.
2. 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.
3. 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 rate or cost data, marketing or financial materials or other competitively sensitive or proprietary information, then that party may designate and stamp such Confidential Information as “HIGHLY CONFIDENTIAL.” Any information or documents so designated or stamped shall be handled as provided hereinafter.

4. 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 an employee, counsel, consultant, or agent of a party to these Proceedings, or an employee of such counsel, consultant, or agent, 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 Exhibit A to this Order.

5. Information and documents designated or stamped as “HIGHLY CONFIDENTIAL” may not be disclosed in any way, directly or indirectly, to any employee of a party to these Proceedings, or to any other person or entity except to:

- (a) outside counsel or outside consultant to a party to these Proceedings, or an employee of such outside counsel or outside consultant; or
- (b) in-house counsel for the Environmental Law & Policy Center; Openlands; and the Sierra Club, Illinois Chapter;

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 Exhibit B to this Protective Order.

6. Any party to these Proceedings may challenge the designation by any other party of information or documents as “CONFIDENTIAL” or as “HIGHLY CONFIDENTIAL” by filing a motion with the Board or with an administrative law judge or other officer to whom authority has been lawfully delegated by the Board to adjudicate such challenges.

7. Designated 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 Docket No. FD 35952, any related proceedings before the Surface Transportation Board, and/or any judicial review proceedings in connection with Docket No. FD 35952, and/or with any related proceedings.

8. Any party who receives Designated 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 outside counsel for a party to these Proceedings) at the earlier 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. No party may include Designated 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 C.F.R. § 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 any administrative law judge or other officer in the exercise of authority lawfully delegated by the Board.

10. No party may present or otherwise use any Designated 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 Designated 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 Designated Material, and (b) restrict access to any portion of the record or briefs reflecting discussion of such Designated Material in accordance with this Protective Order.

11. If any party intends to use any Designated Material in the course of any deposition in these Proceedings, that party shall so advise counsel for the party producing the Designated Material, counsel for the deponent, and all other counsel attending the deposition. Attendance at any portion of the deposition at which any Designated 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 Designated Material shall be filed under seal and be otherwise handled as provided in Paragraph 9 of this Protective Order.

12. To the extent that materials reflecting Confidential Information are produced by a party in these proceedings, and are held and/or used by the receiving person in compliance with the terms of this Protective Order, such production, disclosure, holding, and use of the materials and of the data that the materials contain are deemed essential for the disposition of this and any related proceedings and will not be deemed a violation of 49 U.S.C. § 11904 or of any other relevant provision of the ICC Termination Act of 1995.

13. 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.

14. 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.

15. All parties must file simultaneously a public version of any Highly Confidential or Confidential submission filed with the Board whether the submission is designated a Highly Confidential Version or Confidential Version. When filing a Highly Confidential Version, the filing party does not need to file a Confidential Version with the Board, but must make available (simultaneously with the party's submission to the Board of its Highly Confidential Version) a Confidential Version reviewable by any other party's in-house counsel. The Confidential Version may be served on other parties in electronic format only. In lieu of preparing a Confidential Version, the filing party may (simultaneously with the party's submission to the

Board of its Highly Confidential Version) make available to outside counsel for any other party a list of all “highly confidential” information that must be redacted from its Highly Confidential Version prior to review by in-house personnel, and outside counsel for any other party must then redact that material from the Highly Confidential Version before permitting any clients to review the submission.

**Exhibit A**

**UNDERTAKING - CONFIDENTIAL MATERIAL**

I, \_\_\_\_\_, have read the Protective Order served \_\_\_\_\_, 2016 governing the production and use of Confidential Information and Confidential Documents in Docket No. FD 35952, understand the same, and agree to be bound by its terms. I agree not to use or 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 Docket No. FD 35952, any related proceedings before the Surface Transportation Board, and/or any judicial review proceedings in connection with Docket No. FD 35952, and/or with 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 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 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.

\_\_\_\_\_  
Dated:

**Exhibit B**

**UNDERTAKING - HIGHLY CONFIDENTIAL MATERIAL**

I, \_\_\_\_\_, am outside [counsel] [consultant] for \_\_\_\_\_ for whom I am acting in this proceeding. I have read the Protective Order served on \_\_\_\_\_, 2016, governing the production and use of Confidential Information and Confidential Documents in Docket No. FD 35952, 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 Docket No. FD 35952; any related proceedings before the Surface Transportation Board, or any judicial review proceedings in connection with Docket No. FD 35952, and/or with 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.

I also understand and agree, as a condition precedent to my receiving, reviewing, or using copies of any information or documents designated or stamped as “HIGHLY CONFIDENTIAL,” that I will take all necessary steps to assure that said information or documents 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 materials or information by employees of my client or its subsidiaries, affiliates, or owners, 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 information or documents designated or stamped as “HIGHLY CONFIDENTIAL,” 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 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.

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OUTSIDE [COUNSEL] [CONSULTANT]

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Dated:

