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SERVICE DATE – DECEMBER 2, 2024

SURFACE TRANSPORTATION BOARD

DECISION

Docket No. AB 290 (Sub-No. 412X)

NORFOLK SOUTHERN RAILWAY COMPANY—
ABANDONMENT EXEMPTION—IN THE CITY OF BALTIMORE, MD.

MOTION FOR PROTECTIVE ORDER

Decided: December 2, 2024

On October 31, 2024, Norfolk Southern Railway Company filed a verified notice of exemption under 49 C.F.R. part 1152 subpart F—Exempt Abandonments to abandon its freight rail easement over an approximately one-mile rail line extending from milepost +/- UU 0.00 to milepost +/- UU 1.00 in the City of Baltimore, Md. Notice of the exemption was served and published in the Federal Register on November 20, 2024 (89 Fed. Reg. 91,869).

On November 25, 2024, James Riffin (Riffin) filed a motion requesting that the Board issue a protective order that would allow him to submit certain documents and information in connection with this docket under seal. Concurrent with the motion, Riffin submitted documents he has designated highly confidential, including bank statements, a balance sheet, and an affidavit.

Good cause exists to grant the motion for protective order. The motion conforms with the Board's rules at 49 C.F.R. § 1104.14 governing protective orders to maintain the confidentiality of materials submitted to the Board. Issuance of the protective order will ensure that confidential information will be used solely for this proceeding and not for other purposes. Accordingly, the motion for protective order will be granted and the documents will be made subject to the protective order and the undertakings, as modified in the Appendix to this decision.

It is ordered:

1. The motion for a protective order is granted, and the protective order and undertakings in the Appendix to this decision are adopted.

2. Unredacted documents submitted in Docket No. AB 290 (Sub-No. 412X) will be kept under seal by the Board and not placed in the public docket or otherwise disclosed to the public, unless the appropriate attached undertaking is executed and the terms of the protective order are followed, or unless otherwise ordered by the Board.

3. This decision is effective on its service date.

By the Board, Valerie O. Quinn, Acting Director, Office of Proceedings.

APPENDIX

PROTECTIVE ORDER

1. For purposes of this Protective Order, “Confidential Documents” means documents and other tangible materials containing or reflecting Confidential Information. “Confidential Information” means confidential or proprietary business or personal information.
2. For purposes of this Protective Order, “Highly Confidential Documents” means documents and other tangible materials containing or reflecting Highly Confidential Information. “Highly Confidential Information” means shipper-specific rates or cost data; division of rates, trackage rights compensation levels, other compensation between carriers; or other competitively sensitive or proprietary information.
3. If any party to STB Docket No. AB 290 (Sub-No. 412X) 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 this docket contains Confidential and/or Highly Confidential Information or Confidential and/or Highly Confidential Documents, then that party may designate and stamp such information and documents as “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL,” as appropriate. Any information or documents designated or stamped as “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL” shall be handled as provided for 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 this proceeding, or an employee of such counsel, consultant, or agent, who, before receiving access to such information or documents, has executed and delivered to the party originating the Confidential Information a copy of the attached Undertaking for Confidential Material.
5. Information and documents designated or stamped as “HIGHLY CONFIDENTIAL” 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 purposes of this proceeding or any judicial review proceeding arising herefrom. Prior to receiving access to such materials, the outside counsel or consultant must have executed and delivered to the party originating the Confidential Information a copy of the attached Undertaking for Highly Confidential Material. Material designated as “Highly Confidential Information” shall be subject to all of the other provisions of this Protective Order.
6. Any documents containing Confidential Information and/or Highly Confidential Information must be destroyed at the completion of this and any related Board proceedings, or any judicial review proceeding arising therefrom, whichever comes last, other than file copies, kept by outside counsel, of pleadings and other documents filed with the Board.

7. If the Board retains the Confidential Information and/or Highly Confidential Information, it shall, in order to keep it confidential, treat the information in accordance with the procedure set forth at 49 C.F.R. § 1104.14.
8. If any party intends to use Confidential Information and/or Highly 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 and/or Highly 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/or Highly Confidential Information, and (ii) restrict access to the portion of the record or briefs reflecting discussion of such Confidential Information and/or Highly Confidential Information in accordance with the Protective Order.
9. Any party that files with the Board a document containing Confidential Information or Highly Confidential Information must simultaneously file with the Board a public version of that document.
10. Any party to this or any related proceeding 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.
11. 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 provisions herein.

UNDERTAKING—CONFIDENTIAL MATERIAL

I, _____, have read the Protective Order served on _____, 2024, governing the production and use of Confidential Information and Confidential Documents in STB Docket No. AB 290 (Sub-No. 412X), 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 Docket No. AB 290 (Sub-No. 412X) any related proceedings before the Surface Transportation Board (“Board”), and/or any judicial review proceedings in connection with STB Docket No. AB 290 (Sub-No. 412X) 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.

Signed: _____

Position: _____

Affiliation: _____

Dated: _____

UNDERTAKING—HIGHLY CONFIDENTIAL MATERIAL

As outside [counsel] [consultant] for _____, for which I am acting in this proceeding, I have read the Protective Order served on _____, 2024, governing the production of confidential documents in STB Docket No. AB 290 (Sub-No. 412X), 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 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: _____