

SURFACE TRANSPORTATION BOARD

DECISION

STB Docket No. AB-409 (Sub-No. 5X)

LOS ANGELES COUNTY METROPOLITAN TRANSPORTATION AUTHORITY—

ABANDONMENT EXEMPTION—IN LOS ANGELES COUNTY, CA

MOTION FOR PROTECTIVE ORDER

Decided: July 2, 2008

By motion filed on June 26, 2008, James Riffin (Riffin) seeks a protective order under 49 CFR 1104.14 to protect highly confidential documents, including proprietary marketing information, submitted in connection with a simultaneously filed notice of intent to file an offer of financial assistance in the above captioned docket.

Good cause exists to grant the motion for protective order, as modified herein. The motion conforms with the Board's rules at 49 CFR 1104.14 governing protective orders to maintain the confidentiality of materials submitted to the Board. Issuance of the protective order will ensure that the protected information¹ will be used solely for this proceeding and not for other purposes. Accordingly, the motion for protective order will be granted, as modified herein, and the unredacted information shall be subject to the Protective Order and Undertaking contained in the Appendix to this decision.²

Riffin's motion for a protective order requests that disclosure of the confidential information to parties³ in the proceeding be limited to outside counsel only. He offers no argument in support of this request. In response, the Los Angeles County Metropolitan Transportation Authority (LACMTA) argues that access should be broadened to include its staff. LACMTA points out that, as a public agency, it has no commercial interest in any protected information and no intent to compete with any prospective offeror. Moreover, LACMTA would like its staff to review the protected information in order to advise its outside counsel—and ultimately the Board—as to its sufficiency, accuracy, and relevance.

¹ Riffin describes the information at issue as "highly confidential." The Board offers no assessment of that characterization, but will refer to the information at issue as "protected information."

² A proposed protective order and undertaking were included with the motion.

³ The parties to this proceeding include Riffin, LACMTA and, Union Pacific Railroad Company (UP).

In-house counsel for UP do not engage in marketing. Even if the information in Riffin's pleading were commercially sensitive, placing it in the hands of an attorney who has executed an undertaking not to disclose the protected information would not disadvantage Riffin commercially. Accordingly, there is no reason UP in-house counsel should not have access to these materials. In addition, the Board agrees with LACMTA's position that its staff—the persons most familiar with the facts and information relevant to the potential for the creation of rail service on this line segment—should also be able to review the protected information and evaluate the viability of any service proposal or request. Accordingly, in-house counsel for UP and LACMTA staff will be allowed to view protected information provided they execute the Undertaking in the Appendix and comply with the terms of this protective order.

This action will not significantly affect either the quality of the human environment or the conservation of energy resources.

It is ordered:

1. Riffin's motion for a protective order is granted as modified herein, and the Protective Order and Undertaking in the Appendix to this decision are adopted.
2. The unredacted information submitted in STB Docket No. AB-409 (Sub-No. 5X) 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, Anne K. Quinlan, Acting Secretary.

Anne K. Quinlan
Acting Secretary

APPENDIX

PROTECTIVE ORDER

1. For purposes of this Protective Order, “Highly Confidential Information” means the data and documents furnished to the Board by James Riffin (“Riffin”) in connection with his Notice of Intent to File an Offer of Financial Assistance, in the above-captioned matter, STB Docket No. AB-409 (Sub-No. 5X).
2. Highly Confidential information shall be provided to Counsel of any party to this proceeding and to staff of the Los Angeles County Metropolitan Transportation Authority only pursuant to this Protective Order and only upon execution and prior delivery to Riffin of the attached Undertaking. Highly Confidential Information shall be used solely 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 any other purpose. Highly Confidential Information shall not be provided or disclosed to any other persons or entities.
3. Any documents containing Highly Confidential Information must be destroyed, and notice of such destruction must be served on Riffin, at the completion of this and any related Board proceedings, or any judicial review proceeding arising therefrom, whichever comes first.
4. If the Board retains the Highly Confidential Information, it shall, in order to keep it Highly Confidential, treat the information in accordance with the procedure set forth at 49 CFR 1104.14.
5. If any party intends to use 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 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 Highly Confidential Information, and (ii) restrict access to the portion of the record or briefs reflecting discussion of such Highly Confidential Information in accordance with the Protective Order.
6. Any party filing with the Board a Confidential or Highly Confidential pleading in this proceeding shall simultaneously file a public version of the pleading.
7. 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 of the provisions herein.

EXHIBIT A

UNDERTAKING

HIGHLY CONFIDENTIAL MATERIAL

I, _____, have read the Protective Order governing the filing of Highly Confidential Information by James Riffin (“Riffin”) in STB Docket No. AB-409 (Sub-No. 5X), 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 the 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 preservation of evidence and argument in STB Docket No. AB-409 (Sub-No. 5X) 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 Protective 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 Riffin 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 other remedies available at law or equity.

Signed: _____ Address: _____

Position: _____

Affiliation: _____ Telephone: _____

Dated: _____