

209454

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November 19, 2003

VIA FEDERAL EXPRESS

Vernon A. Williams
Secretary
Surface Transportation Board
1925 K Street, N.W.
Washington, D.C. 20423-0001

ENTERED
Office of Proceedings

NOV 19 2003

Part of
Public Record

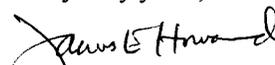
Re: Granite State Concrete Co., Inc., et al. v. Springfield Terminal
Railway Co., et al.
Docket No. NOR 42083

Dear Secretary Williams:

Enclosed for filing in the above captioned matter are the original and 10 copies of the "Joint Motion for Entry of Protective Order and Modification of Procedural Schedule". Also enclosed is an extra copy of the Motion.

Could you please acknowledge receipt of the Joint Motion by date stamping the extra copy and returning it to me in the self-addressed stamped envelope? Thank you very much for your assistance.

Very truly yours,

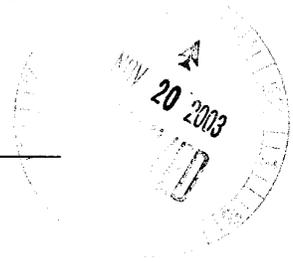

James E. Howard

cc: Robert B. Culliford

209454

BEFORE THE
SURFACE TRANSPORTATION BOARD

Docket No. NOR 42083



GRANITE STATE CONCRETE CO., INC. and
MILFORD-BENNINGTON RAILROAD COMPANY, INC.

v.

BOSTON AND MAINE CORPORATION and
SPRINGFIELD TERMINAL RAILWAY CO.

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JOINT MOTION FOR ENTRY OF PROTECTIVE ORDER AND
MODIFICATION OF PROCEDURAL SCHEDULE

Milford-Bennington Railroad Company, Inc. and Granite State Concrete Company, Inc., the plaintiffs, and Boston and Maine Corporation and Springfield Terminal Railway Company, the defendants, hereby jointly request the Board to enter a protective order in the form attached hereto and to modify the procedural schedule in this case in the manner outlined below.

In its decision dated September 12, 2003, the Board established a procedural schedule that provided for the completion of discovery by October 30, 2003 and the filing of opening statements by December 1, 2003. In the decision, the Board also "strongly urged" the parties to explore the use of alternative dispute resolution mechanisms in order to attempt to resolve their dispute.

The parties decided to attempt to resolve the dispute through mediation, and, at the parties' request, the Board made available Melvin F. Clemens of the Board's Office of Enforcement and Compliance to act as the mediator. The mediation was eventually held, after several delays due to scheduling issues, on October 28, 2003. As a result of the mediation, discovery, and particularly discovery in the form of the taking of depositions, was deferred to a certain extent. The mediation did not successfully resolve the dispute.

Certain of the information requested by Guilford in discovery constitutes information that is confidential and proprietary to Milford-Bennington or Granite State. The plaintiffs have provided such information pursuant to a Confidentiality Agreement, a copy which is attached hereto as Exhibit A. The parties request the Board to enter a Protective Order in the form attached to the Confidentiality Agreement. The Protective Order is substantially similar to protective orders typically entered by the Board to protect confidential information.

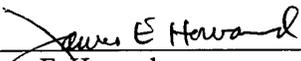
The parties have substantially completed discovery as of this date, but, as a result of the mediation and the extension of discovery activities, they require certain additional time beyond December 1, 2003 to prepare and submit opening statements. The parties respectfully request, therefore, that the Board modify the procedural schedule to provide for the filing of opening statements on January 8, 2004, the filing of reply statements 30 days thereafter and the submission of rebuttal statements 15 days after the reply statements. The parties agree that none of them will be prejudiced by such an extension of the schedule.

For the reasons outlined above, therefore, the parties request the Board to enter the Protective Order attached hereto and to extend the procedural schedule as suggested above.

Respectfully submitted,

GRANITE STATE CONCRETE CO., INC.
and
MILFORD-BENNINGTON RAILROAD
COMPANY, INC.

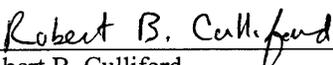
By their attorney,



James E. Howard
One Thompson Square, Suite 201
Charlestown, Massachusetts 02129
Telephone: 617-886-9322
Facsimile: 617-886-9324

BOSTON AND MAINE CORP.
and
SPRINGFIELD TERMINAL RAILWAY
COMPANY

By their attorney,



Robert B. Culliford *by JEB*
Guilford Rail System
Iron Horse Park
North Billerica, Massachusetts 01862
Telephone: 978-663-1029
Facsimile: 978-663-1213

Dated: November 19, 2003

EXHIBIT
A

CONFIDENTIALITY AGREEMENT

This Confidentiality Agreement (the "Agreement") made as of this 4th day of November, 2003 by and among Milford-Bennington Railroad Company, Inc. ("MBR"), Granite State Concrete Company, Inc. ("Granite State"), Springfield Terminal Railway Company ("ST") and Boston and Maine Corporation ("B&M").

WHEREAS, MBR, Granite State, ST and B&M are parties in a proceeding before the Surface Transportation Board ("STB") (Docket No. NOR 42083); and

WHEREAS, in discovery, ST and B&M have requested information from MBR and Granite State that is confidential; and

WHEREAS, MBR and Granite State are willing to provide, and ST and B&M are willing to receive and use, such information only in accordance with the Protective Order attached hereto.

NOW, THEREFORE, in consideration of the foregoing premises and mutual agreements set forth below, and intending to be legally bound, the parties hereto, through their duly authorized counsel, hereby agree as follows:

1. The Protective Order shall govern the production and use of any Designated Material, as defined in the Protective Order, effective as of the date of this Agreement.
2. The parties shall promptly file a petition with the STB requesting the approval and entry of the Protective Order in Docket No. NOR 42083.

3. If the STB determines that it will not approve the Protective Order, ST and B&M shall promptly return any Designated Material to MBR and Granite State in accordance with the terms of the Protective Order.

MILFORD-BENNINGTON RAILROAD,
CO., INC.

and

GRANITE STATE CONCRETE CO., INC.

By James E. Howard
James E. Howard

SPRINGFIELD TERMINAL RAILWAY
COMPANY

and

BOSTON AND MAINE CORPORATION

By Robert B. Calliford
Robert B. Calliford

PROTECTIVE ORDER

1. For purposes of this Protective Order:

(a) "Confidential Documents" means documents and other tangible materials containing or reflecting Confidential Information.

(b) "Confidential Information" includes but is not limited to financial statements, the identity of customers, invoices, operational permits, the identity of representatives of Guilford who granted MBR permission to perform maintenance on the Trackage Rights Line, confidential financial and revenue and cost data, and other confidential or proprietary business information.

(c) "Designated Material" means any documents designated or stamped as "CONFIDENTIAL" or "HIGHLY CONFIDENTIAL" in accordance with paragraphs 2 or 3 of this Protective Order, and any Confidential Information contained in such documents.

(d) "Proceedings" means those before the Surface Transportation Board ("Board") in STB Docket No. NOR 42083 and any related proceedings before the Board, and any judicial review proceedings arising from STB Docket No. NOR 42083 or from any related proceedings before the Board.

(e) "Copy" or "Copies" means reproductions made through any process, including photostatic or photographic reproduction, manual recopying, microfilm, dictation, or mechanical, magnetic or electronic duplication.

(f) "Document" or "Documents" means any written, printed, typed, recorded, taped, electronic, magnetic, computer generated or graphic matter of any kind, and all copies thereof, including, without limitation, any drawing; graph; chart; photograph; data; compilation; agreement; correspondence; note; memoranda; minutes; agendas; reports and recordings of telephone or other conversations, of interviews, conferences, or of other meetings; statements; summaries; opinions; reports; studies; analyses; evaluations; journals; statistical records; desk or computer calendars; appointment books; diaries; tabulations; sound recordings; computer files; computer print outs; data processing input and output; microfilm; web pages; word processing files; other computer materials including, but not limited, to "e-mail" or similar correspondence using computer terminals or computer generated graphics or stored information; all other records kept by electronic, magnetic, photographic, or mechanical means, including without limitation, all data and information whether printed out, or stored on or retrievable from tapes, cassettes, disks, drives or from rapid access or other memory of any kind, including all back-up copies, undeleted data, or document or remnant files.

2. If MBR or Granite State determines in its sole discretion that any part of a discovery request or response, of a transcript of a deposition or hearing, or of a pleading or other paper filed or served by it in these Proceedings contains Confidential Information or consists of Confidential Documents, then MBR or Granite State may designate and stamp such Confidential Information and Confidential Documents as "CONFIDENTIAL." Any information or documents so designated or stamped shall be handled as provided for hereinafter.

3. When producing material in discovery to a party to these Proceedings, or submitting material in pleadings or other documents filed or served in these Proceedings, MBR or Granite State may in good faith designate and stamp particular Confidential Information as "HIGHLY CONFIDENTIAL." Any information or documents so designated or stamped 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 these Proceedings to whom it is necessary that the Confidential Information be disclosed for purposes of 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, except Robert B. Culliford and Sonya Cuay, or to any other person or entity except to an outside counsel or outside consultant to a party to these Proceedings, or to an employee of such outside counsel or outside consultant, 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 Order. Guilford shall inform MBR and Granite State in writing within three (3) business days, of the number and identity (name, address, place of employment, employment capacity, and relationship to or interest in this action) of each person to whom any such "HIGHLY CONFIDENTIAL" information or document has been disclosed and the number of copies which have been made of such information or documents.

6. Files of all confidentiality undertakings executed by persons to whom Designated Material has been made available to disclosed shall be maintained by Guilford. Such files shall be made available for inspection and copying by MBR and Granite State.

7. If MBR or Granite State inadvertently fails to stamp or otherwise appropriately designate certain Designated Materials upon their production or disclosure, such inadvertent failure to designate shall not constitute nor be deemed a waiver in whole or in part of a subsequent claim of protected treatment under this Protective Order. MBR or Granite State may designate such Designated Material as "CONFIDENTIAL" or "HIGHLY CONFIDENTIAL" by

promptly giving written notice to Guilford upon discovery of the inadvertent failure to designate and by advising therein that such material is to be so designated by stamping or otherwise. Guilford shall then stamp or otherwise mark the Designated Material as "CONFIDENTIAL" or "HIGHLY CONFIDENTIAL" as described above and treat it accordingly as required by this Protective Order.

8. Guilford may challenge the designation 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 challenge(s). It may not disclose any Designated Material marked as "CONFIDENTIAL" or "HIGHLY CONFIDENTIAL" unless and until the Board or an administrative law judge provides appropriate relief, in writing, to all parties involved.

9. Designated Material may not be used for any purposes other than these Proceedings, including without limitation any business, commercial, strategic, or competitive purpose. Guilford shall at all times keep secure all notes, abstractions or other work product derived from or containing Designated Materials; shall be obligated to maintain the confidentiality of such work product; and, shall not disclose or reveal the contents of said notes, abstractions, or other work product after the Designated Material is returned or destroyed pursuant to this Protective Order. Any recipient of any Designated Material protected by this Protective Order, shall not disseminate orally, or by any other means, any Designated Material other than as permitted by this Protective Order. Once protections pursuant to this Protective Order have attached to Designated Material, such protection shall not be reduced or waived by further communicating, restating, summarizing, discussing or referring to any Designated Material during the course of these Proceedings.

10. Nothing in this Protective Order shall be construed as a waiver of any privilege that may be applicable to any Confidential Information. Nothing in this Protective Order shall prejudice in any way the rights of the Granite State or MBR to object to the production of Designated Material they consider not subject to discovery.

11. If it receives Designated Material in discovery, Guilford shall return to MBR and Granite State or shall destroy¹ 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 it withdraws from these Proceedings; or (2) the completion of these Proceedings, including any petitions for reconsideration, appeals, or remands. Guilford shall make a reasonable effort to retrieve any Designated Material that has been given to third parties in accordance with this Protective Order, and shall notify MBR and Granite State of the failure to retrieve any Designated Material. Such notification shall include a descriptive detail of any Designated Material not returned.

¹ "Destroy" shall mean shredding of paper documents and destruction of computer-memory devices (e.g., floppy diskettes).

12. Guilford may not 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 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.

13. Guilford may not include Designated Material in any pleading, brief, discovery request or response, or other document submitted to any forum other than the 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 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 a Protective Order," and is accompanied by a motion to that tribunal requesting issuance of a protective order that would require that 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 Guilford.

14. Guilford may not present or otherwise use any Designated Material at a Board hearing in these Proceedings, unless it 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.

15. If Guilford intends to use any Designated Material in the course of any deposition in these Proceedings, it shall so advise opposing counsel 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.

16. 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.

17. Nothing in this Protective Order restricts the right of any person or entity to disclose

voluntarily any Confidential Information originated by that person or entity, or to disclose voluntarily any Confidential Documents originated by that person or entity, if such Confidential Information or Confidential Documents do not contain or reflect any Confidential Information originated by any other person or entity, unless that person or entity has consented in writing to the disclosure.

18. 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 provided to 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 governing the production and use of Confidential Information and Confidential Documents in STB Docket No. NOR 42083 and related proceedings, 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 STB Docket No. NOR 42083, any related proceedings before the Surface Transportation Board, and/or any judicial review proceedings in connection with STB Docket No. NOR 42083 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 applicants or other persons or entities 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, _____, have read the Protective Order governing the production and use of Confidential Information and Confidential Documents in STB Docket No. NOR 42083 and related proceedings, 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 STB Docket No. NOR 42083, any related proceedings before the Surface Transportation Board, and/or any judicial review proceedings in connection with STB Docket No. NOR 42083, 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 applicants or other persons or entities 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.

OUTSIDE [COUNSEL] [CONSULTANT]

Dated: _____