

October 1, 2008

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Via Hand Delivery

Honorable Anne Quinlan  
Acting Secretary  
Surface Transportation Board  
395 E Street, SW  
Washington, DC 20423



**RE: Finance Docket No. 35183  
Genesee & Wyoming Inc. – Control Exemption – Georgia  
Southwestern Railroad, Inc.**

Dear Secretary Quinlan:

On behalf of Genesee & Wyoming Inc (“GWT”), please find enclosed for filing in the above-referenced docket a Motion for Protective Order. An redacted copy of the confidential Stock Purchase Agreement that is the subject of the Motion for Protective Order is being filed under seal in a separate envelope.

Please contact me if you have any questions. Thank you.

Respectfully submitted,

Edward J. Fishman  
Attorney for Genesee & Wyoming Inc

Enclosure

ENTERED  
Office of Proceedings  
OCT 2 - 2008  
Part of  
Public Record

BEFORE THE  
SURFACE TRANSPORTATION BOARD

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FINANCE DOCKET NO. 35183

GENESEE & WYOMING INC  
-- CONTROL EXEMPTION --  
GEORGIA SOUTHWESTERN RAILROAD, INC.

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**MOTION FOR PROTECTIVE ORDER**

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**ATTORNEYS FOR  
GENESEE & WYOMING INC.**

Dated: October 1, 2008

BEFORE THE  
SURFACE TRANSPORTATION BOARD

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FINANCE DOCKET NO. 35183

GENESEE & WYOMING INC.  
-- CONTROL EXEMPTION --  
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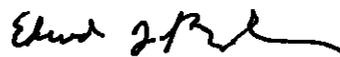
**MOTION FOR PROTECTIVE ORDER**

Genesee & Wyoming Inc. ("GWI") hereby moves for a protective order pursuant to 49 C.F.R. § 1104.14(b), in the form set forth in Appendix A hereto, in order to allow GWI to submit to the Surface Transportation Board (the "Board") under seal an unredacted copy of the Stock Purchase Agreement ("Purchase Agreement") entered into by and between GSW Acquisition Sub Inc. ("GSW Sub"), GWI, Terry R. Small and David L. Smoot, pursuant to which GSW Sub will purchase all outstanding shares of Georgia Southwestern Railroad, Inc. ("GSR"). GSW Sub is a non-carrier, wholly-owned direct subsidiary of GWI. Pursuant to the Purchase Agreement, GSW Sub intends to acquire GSR, and GSR will continue as a corporation whose sole shareholder is GSW Sub. Thus, upon consummation of the proposed purchase, GSW Sub will acquire direct control of GSR, and GWI (which will control GSW Sub through ownership of all of its shares) will acquire indirect control of GSR. The Purchase Agreement is being filed with the Board in connection with GWI's Petition for Exemption, pursuant to 49 C.F.R. § 1180.2(d)(2), in STB Finance Docket No. 35183 and is submitted in a separate package marked "Highly Confidential – Filed Under Seal Subject to a Request for a Protective Order" pursuant to 49 U.S.C. § 11323.

The Purchase Agreement was privately negotiated and contains proprietary confidential and highly sensitive information relating to the commercial terms of GSW Sub's planned acquisition of GSWR and GWI's indirect acquisition of control of GSWR (a Class III rail carrier). The Purchase Agreement contains highly sensitive confidential information that could harm GWI and its subsidiaries if it became public and contains proprietary commercial information that, if disclosed, could be competitively damaging. The Board has approved the filing of stock purchase agreements under seal in control exemption proceedings in the past. See Patriot Rail, LLC and Patriot Rail Corp. – Control Exemption – Rarus Railway Company, STB Finance Docket No. 35013 (STB served Apr. 17, 2007); Patrick D. Broe and BNS Holdings, Inc. – Acquisition of Control Exemption – Nebraska, Kansas & Colorado Railnet, Inc., Illinois Railnet, Inc., and Georgia & Florida Railnet, Inc., STB Finance Docket No. 34687 (STB served May 5, 2005), RailAmerica, Inc. – Control Exemption – Statesrail Acquisition Corp. and Statesrail, Inc., STB Finance Docket No. 34129 (STB served Dec 5, 2001).

For the reasons stated above, GWI respectfully requests that the Board issue a protective order in the form that is attached to this Motion and allow the Purchase Agreement to be filed under seal.

Respectfully submitted,



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Kevin M. Sheys  
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1601 K Street, NW  
Washington, DC 20006  
(202) 778-9000

**ATTORNEYS FOR  
GENESEE & WYOMING INC.**

**Dated: October 1, 2008**

## **APPENDIX A**

### **PROTECTIVE ORDER**

1. For the purposes of this Protective Order:

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

(b) "Confidential Information" means traffic data (including but not limited to waybills, abstracts, study movements sheets, and any documents or computer tapes containing data derived from waybills, abstracts, study movements sheets, or other data bases, and cost workpapers); the identification of shippers and receivers in conjunction with shipper-specific or other traffic data; the confidential terms of contracts with shippers, confidential financial and cost data, and other confidential or proprietary business or personal information.

(c) "Designated Material" means any documents designated or stamped as "CONFIDENTIAL" or "HIGHLY CONFIDENTIAL" in accordance with paragraph 3 or 4 of this Protective Order, and any Confidential Information contained in such materials.

(d) These "Proceedings" consist of STB Finance Docket No. 35183, any related proceedings before the Surface Transportation Board and any judicial review proceedings arising from STB Finance Docket No. 35183 or from any related proceedings before the Board.

2. Personnel of Genesee & Wyoming Inc and its affiliates (collectively referred to as "GWI"), and Georgia Southwestern Railroad, Inc. (collectively referred to as "GSRW"), including outside consultants and attorneys for GWI or GSRW ("representatives"), may exchange Confidential Information for the purpose of participating in the Proceedings, but not for any other business, commercial, or other competitive purpose, except to the extent that they would have been able to exchange such information apart from this Protective Order.

3. If any party to these Proceedings determines that any part of a document it submits, of a discovery request or response, of a transcript of a deposition or hearing, or of a pleading or other paper 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, except that no prohibition in any subsequent paragraph is applicable to an exchange of information pursuant to paragraph 2 of this Protective Order

4. Any party producing material in discovery to another party to these Proceedings, or submitting material in pleadings or other documents filed or served, may in good faith designate and stamp particular Confidential Information, such as material containing shipper-specific rate or cost data or other competitively sensitive or proprietary information, as "HIGHLY CONFIDENTIAL." Any information or documents so designated or stamped shall be handled

as provided hereinafter, except that no prohibition in any subsequent paragraph is applicable to an exchange of information pursuant to paragraph 2 of this Protective Order.

5. 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.

6. 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 an outside counsel or outside consultant of a party to these Proceedings 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

7. 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 challenge(s).

8. Designated Material may not be used for any purposes other than these Proceedings, including without limitation any business, commercial, strategic, or competitive purpose.

9. 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.

10. 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 an administrative law judge or other officer in the exercise of authority lawfully delegated by the Board.

11. No party may include Designated Material in any pleadings, 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 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 that 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.

12. 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.

13. 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 Materials shall be filed under seal and be otherwise handled as provided in paragraph 10 of this Protective Order

14. 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 paragraphs 1, 2, 3 or 4 above, 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

15. 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.

16. 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

**EXHIBIT A**

**UNDERTAKING**

**CONFIDENTIAL INFORMATION**

I, \_\_\_\_\_, have read the Protective Order served on \_\_\_\_\_, 2008, governing the production and use of Confidential Information and Confidential Documents in STB Finance Docket No. \_\_\_\_\_, 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 this Undertaking, or to use or to permit the use of any techniques disclosed or information learned as a result of receiving such Confidential Information or Confidential Documents, for any purpose other than the preparation and presentation of evidence and argument in STB Finance Docket No. \_\_\_\_\_, in any related STB proceedings, or any judicial review proceedings arising therefrom. I further agree not to disclose any Confidential Information or Confidential Documents obtained under this Protective Order to any person who is not also bound by the terms of the Protective Order and who has not executed an Undertaking in the form hereof. At the conclusion of this proceeding and any judicial review proceeding arising therefrom, I will promptly destroy all copies of any documents containing or reflecting materials designated or stamped as "CONFIDENTIAL" provided, however, that outside counsel (but not outside consultants) may retain file copies of its work product and of pleadings and evidence filed with the Board. I further understand that a party may retain its own confidential material.

I understand and agree that money damages would not be a sufficient remedy for breach of this Undertaking and that a party which asserts the confidential interest shall be entitled to specific performance and injunctive or other equitable relief as a remedy for any such breach. 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: \_\_\_\_\_

**EXHIBIT B**

**UNDERTAKING**

**HIGHLY CONFIDENTIAL INFORMATION**

As outside [counsel] [consultant] for \_\_\_\_\_, for which I am acting in this proceeding, I have read the Protective Order served on \_\_\_\_\_, 2008, governing the production and use of Confidential Information and Confidential Documents in STB Finance Docket No. \_\_\_\_\_, understand the same, and agree to be bound by its terms. I also understand and agree, as a condition precedent to my receiving, reviewing, or using copies of any documents or information designated "HIGHLY CONFIDENTIAL," that I will limit my use of those documents and information to the preparation and presentation of evidence and argument in STB Finance Docket No. \_\_\_\_\_, any related STB proceedings and any judicial review proceedings arising therefrom, that I will take all necessary steps to ensure that said Confidential Documents and Confidential Information will be kept on a confidential basis by any outside counsel or outside consultants working with me that have executed this Undertaking and have agreed to be bound by the terms of the Protective Order, that under no circumstances will I permit access to said Confidential Documents or Confidential Information by personnel of my client, its subsidiaries, affiliates, or owners, except as otherwise provided in the Protective Order, and that at the conclusion of this proceeding and any judicial review proceeding arising therefrom, I will promptly destroy any copies of all documents containing or reflecting documents or information stamped or designated as "HIGHLY CONFIDENTIAL" provided, however, that outside counsel (but not outside consultants) may retain file copies of its work and of any pleadings and evidence filed with the Board. I further understand that I must destroy all notes or other documents containing such Highly Confidential information or documents received from any other party in compliance with the terms of the Protective Order. Under no circumstances will I permit access to documents or information 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 a party which asserts the confidential interest shall be entitled to specific performance and injunctive or other equitable relief as a remedy for any such breach. 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:

\_\_\_\_\_  
OUTSIDE [COUNSEL] [CONSULTANT]

Dated:

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