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SERVICE DATE - MAY 8, 1998

SURFACE TRANSPORTATION BOARD

STB Finance Docket No. 33388

CSX CORPORATION AND CSX TRANSPORTATION, INC.,
NORFOLK SOUTHERN CORPORATION AND
NORFOLK SOUTHERN RAILWAY COMPANY
--CONTROL AND OPERATING LEASES/AGREEMENTS--
CONRAIL INC. AND CONSOLIDATED RAIL CORPORATION

Decision No. 79

Decided: May 7, 1998

This decision addresses the petition by Cyprus Amax Coal Sales Corporation (Cyprus Amax), filed April 28, 1998, for leave to intervene and file comments.¹ Applicants² replied in opposition to Cyprus Amax's petition. See CSX/NS-205, filed May 1, 1998.

BACKGROUND

In its petition, Cyprus Amax states that it has not previously participated in this proceeding in view of applicants' representations that, although NS will have operational control of Conrail's Monongahela coal lines,³ CSX will have equal access to all current and future facilities in the area. Cyprus Amax contends that applicants' inability to negotiate an implementing operating plan for the area forces it to seek intervention at this time and the imposition of operating conditions to protect its interests. Although it is aware of our recent decision denying a similar intervention request by CONSOL Inc., see Decision No. 77, served April 24, 1998, Cyprus Amax avers that, unlike CONSOL, its interests have not been addressed by other parties in this proceeding. Petitioner claims that it should not be penalized for not burdening the Board with filings that appeared unnecessary, given the representations by applicants.

¹ Cyprus Amax tendered comments and a verified statement with its petition to intervene (CYPR-1).

² "Applicants" refers to CSX Corporation and CSX Transportation, Inc. (collectively CSX), and Norfolk Southern Corporation and Norfolk Southern Railway Company (collectively NS). In this proceeding, applicants seek approval and authorization under 49 U.S.C. 11323-25 for: (1) the acquisition by CSX and NS of control of Conrail Inc., and Consolidated Rail Corporation (collectively Conrail); and (2) the division of Conrail's assets by and between CSX and NS.

³ Cyprus Amax states that it operates a coal mine, and plans the construction of another facility, in the area served by the former Monongahela Railway Company, which was acquired by Conrail in 1991.

Applicants argue that there is no difference between Cyprus Amax's petition to intervene and CONSOL's petition, and it should likewise be denied. According to applicants, Cyprus Amax has made no showing that it was prevented in any way from participating in the proceeding or following the established procedures. Applicants maintain that permitting Cyprus Amax to intervene at this time would seriously compromise the meaning of procedural deadlines and prejudice applicants in their ability to present their case.

DISCUSSION AND CONCLUSIONS

The petition to intervene will be denied. Cyprus Amax claims that, unlike the situation of CONSOL in Decision No. 77, no affiliate has addressed its interests in this proceeding. However, Cyprus Amax's concerns have been outlined in a verified statement of a Cyprus Amax official appended to the comments and request for conditions of Bessemer & Lake Erie Railroad Company. See BLE-8, filed October 21, 1997, V.S. Huston. Those concerns address the same Monongahela coal movements at issue in the instant petition to intervene.⁴ Cyprus Amax has failed to show that its position is materially different from that of CONSOL in Decision No. 77. Although we are denying Cyprus Amax's request to intervene, we reiterate that we will assess the proposed acquisition of Conrail in the light of representations made in the application, including applicants' stated intention to afford equal access to all facilities in the Monongahela area.⁵

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

It is ordered:

1. The petition to intervene in CYPR-1 is denied.

⁴ In addition, we note that Centerior Energy Corporation (CEC), a major Monongahela coal customer, included in its comments (CEC-5, V.S. Kovach) its concerns regarding the impact on its coal supplier, Cyprus Amax Minerals Company, which has an agreement with CEC to supply approximately 600,000 tons per year of coal from its eastern mines (mainly from its Emerald Mine in the Monongahela region) and approximately 400,000 tons per year of coal from its western mines (mainly from its Belle Ayr Mine in the Powder River Basin).

⁵ See Decision No. 12, at 8, served July 23, 1997, and published that day in the Federal Register at 62 FR 39577.

2. This decision is effective on its service date.

By the Board, Chairman Morgan and Vice Chairman Owen.

Vernon A. Williams
Secretary