

SURFACE TRANSPORTATION BOARD

DECISION

STB Finance Docket No. 33388 (Sub-No. 100)

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

Decided: August 29, 2006

By a request filed on August 25, 2006, Norfolk Southern Corporation, Norfolk Southern Railway Company, CSX Corporation, CSX Transportation, Inc., Conrail Inc., and Consolidated Rail Corporation (collectively, respondents) seek to modify the procedural schedule set by the Board in a decision served on August 16, 2006 (August 16 decision).¹ Specifically, respondents request a 3-week extension of portions of the procedural schedule established by the Board's August 16 decision, to permit respondents to respond to the revised discovery requests that Bridgewater Resources, Inc. (BRI) and ECDC Environmental, L.C.C. (ECDC) (collectively, petitioners) submitted on August 4, 2006.

Respondents state that petitioners concur with this extension request provided that respondents agree to file by August 28, 2006 (per the schedule set by the August 16 decision) any objections to the revised discovery requests based on the grounds that the discovery request (1) goes beyond the "limited discovery" allowed by the Board in the July 31 decision, or (2) is otherwise irrelevant to any issue presented by the BRI/ECDC petition and not reasonably calculated to lead to the discovery of relevant evidence. Respondents, however, reserve the right to object to any of the discovery requests on any other grounds at a later time (i.e., by September 18, 2006, when the other discovery responses are due under the proposed schedule).

Respondents state that the extension is necessary because respondents' efforts to date to respond to the revised discovery requests have made it apparent that it will not be possible for all respondents to comply fully with those requests sooner than September 18. Respondents note that the revised discovery seeks extensive information and documents regarding complex negotiations, as well as historical information, that require a substantial amount of time to assemble and review.

Respondents' request for a 3-week postponement of certain of the due dates set forth in the Board's August 16 decision is reasonable and will be granted as set forth below.

¹ The August 16 decision granted a 2-week postponement of the due dates set forth by the Board in a decision served on July 31, 2006 (July 31 decision).

It is ordered:

1. The request for modification of the procedural schedule is granted.
2. Relevancy objections are due on August 28, 2006. Other discovery responses are due September 18, 2006. Petitioners have until October 6, 2006, to complete discovery.
3. Upon completion of discovery, petitioners have until November 3, 2006, to supplement the petition based on additional information provided by respondents in response to petitioners' discovery request, unless the Board provides otherwise in connection with any motions to compel.
4. Any person who wishes to file comments respecting this petition as supplemented must do so by November 23, 2006.
5. Petitioners will have until December 5, 2006, to reply to those comments.
6. Any motions to compel that may be necessary regarding relevancy objections must be filed by September 5, 2006. Replies to motions to compel will be due 3 business days later.
7. Any motions to compel that may be necessary regarding any other discovery requests must be filed by September 26, 2006. Replies to motions to compel will be due 3 business days later.
8. This decision is effective on the date of service.

By the Board, Vernon A. Williams, Secretary.

Vernon A. Williams
Secretary