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SEC

SERVICE DATE - LATE RELEASE JANUARY 28, 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. 65

Decided: January 28, 1998

On January 14, 1998, the Illinois International Port District (Port of Chicago or movant) filed a motion, designated as Port/Chi-3, for leave to file out of time a reply to the rebuttal of applicants.<sup>1</sup> Port of Chicago indicates that, on October 21, 1997, it timely filed comments and a request for conditions, but did not receive applicants' rebuttal and response<sup>2</sup> until January 12, 1998, after directing two requests to applicants' representatives. Movant states that, because of the delayed receipt of applicants' response, it could not file a reply by the January 14, 1998 due date for rebuttals in support of inconsistent and responsive applications. Movant therefore requests permission to file a response to applicants' rebuttal within 30 days from the date of its receipt of applicants' submission, or by February 11, 1998.

Applicants oppose the motion. Although expressing regret over the delayed receipt of their rebuttal submission, applicants maintain that the Port of Chicago, as a party that filed only comments and a request for conditions, is not entitled to submit rebuttal evidence as if it were a party that filed a responsive or inconsistent application. Applicants further contend that the Port of Chicago failed to identify any prejudice from the indicated delay.

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<sup>1</sup> "Applicants" refers to CSX Corporation and CSX Transportation, Inc. (collectively CSX), Norfolk Southern Corporation and Norfolk Southern Railway Company (collectively NS), and Conrail Inc. and Consolidated Rail Corporation (collectively Conrail). 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; (2) and the division of Conrail's assets by and between CSX and NS.

<sup>2</sup> Applicants filed their rebuttal and response to comments, requests for conditions, and other opposition evidence on December 15, 1997.

The motion will be denied. Parties filing comments, protests, and requests for conditions, as in the case of Port of Chicago, are not permitted to file rebuttal in support of those pleadings.<sup>3</sup> Parties filing inconsistent and/or responsive applications have the right to file rebuttal evidence, while parties simply commenting, protesting, or requesting conditions do not. See Decision No. 6, slip op. at 6, served May 30, 1997, and published that date at 62 FR 29387, 29390 and prior rail consolidation decisions cited therein. The January 14, 1998 due date referred to by movant is the due date for inconsistent or responsive applicants to file rebuttals in support of their applications. Port of Chicago did not file an inconsistent or responsive application and it is not entitled to file a rebuttal statement. Because movant may not file a rebuttal, the delay in receiving applicants' response does not affect its procedural rights in this proceeding.

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

It is ordered:

1. Port of Chicago's motion to file its response out of time (Port/Chi-3) is denied.
2. This decision is effective on its service date.

By the Board, Vernon A. Williams, Secretary.

Vernon A. Williams  
Secretary

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<sup>3</sup> As a party of record and commenter, however, Port of Chicago is entitled to file a brief on or before February 23, 1998. Parties' briefs may not contain new evidence.

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