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ALJ

SERVICE DATE - JULY 18, 1997

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. 11

Decided: July 18, 1997

A discovery conference was held on July 16, 1997 to hear oral argument on a motion to compel responses to discovery by CSX Corporation and CSX Transportation, Inc. ("CSX"), Norfolk Southern Corporation and Norfolk Southern Railway Company (NS), and Conrail, Inc. and Consolidated Rail Corporation (Conrail).¹

The motion sought an order to compel responses to three Document Requests and six Interrogatories. Since the respondents had until July 19, 1997 to respond to the Interrogatories, action on the Interrogatories is being held in abeyance until the respondents reply. If a dispute arises, the movants will renew their motion.

After hearing argument, rulings on each of the requests were made on the record. The arguments of the parties are set forth in the moving papers and the responses thereto filed by NS, CSX and Conrail as well as advanced orally by counsel for each of the parties. All the arguments have been considered and the basis for the rulings made have been expressed by the Presiding Judge on the Record. This is a confirming decision.²

¹American Electric Power Service Corporation, by letter dated July 15, 1997, joined this proceeding as a movant.

²If there is an inconsistency with regard to any ruling between this confirming decision and the record of the Oral Argument, the Record ruling prevails.

The following rulings are common to all of the document requests.

I find that the discovery as limited below may lead to admissible evidence that may enable the movants to prove that the "one lump" economic theory does not apply in this proceeding. Balancing the burden asserted by the respondent against the need of the movants to know, I find that the need to know outweighs the burden, subject to the limitations described below. The discovery ordered below is necessary for the movants to establish their premise.

The information ordered produced shall be for the years 1995 through the second quarter of 1997, and with respect to each of the Documents Requests as follows: CSX, the years 1978 through 1982; NS, the years 1980 through 1984; and Conrail, the years 1988 through 1992.

The information ordered is limited to those destinations at which the movants receive service from the respondents.³

Discovery Request No. 1. Identify and produce all documents, in the department(s) for the carriage of coal by unit train or trainload movement, to every destination served by each of the respondents at which 100,000 tons or more of coal was consumed for the years 1987-97.

Ruling. Granted with the limitations set forth above.

Document Request No. 2. Identify and produce all files, of the department(s) responsible for establishing or negotiating rates for the carriage of coal, that relate to the bid documents responsive to Document No.1, including subsequent or prior correspondence or analyses.

Ruling. Granted subject to the limitations set forth above.

Document Request No. 3. Produce 100% traffic tapes from 1978 through second quarter 1997. We request that Conrail

³See letter dated July 16, 1997 annexed to this decision. In accordance with request from counsel for the movants, the term "Conrail destinations" include the coal delivered by Conrail to the Monongahela River and then by barge to plants of American Electric Power Service Corporation and the coal produced by Ohio Valley Coal Company delivered to the Conrail served plants of Centerior Energy at Eastlake and Ashtabula.

furnish these traffic tapes in computer readable form, where available, including all necessary record layouts field descriptions and documentation. For each carload handled by Conrail provide the information set forth in Motion to Compel.

Ruling. Conrail and NS have until July 19, 1997 to respond. Therefore, as to these respondents, the motion to compel is held in abeyance subject to renewal by the movants after that date.

The motion is granted as to CSX limited to the years set forth above and limited to traffic tapes of coal.

This decision is effective on the service date.

By the Board, Jacob Leventhal, Administrative Law Judge.

**Vernon A. Williams
Secretary**