

SERVICE DATE - AUGUST 1, 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. 16

Decided: July 31, 1997

In Decision No. 6 (served May 30, 1997, and published that day in the *Federal Register* at 62 FR 29387) and again in Decision No. 12 (served July 23, 1997, and published that day in the *Federal Register* at 62 FR 39577), we ordered: that any appeal to a decision issued by Judge Leventhal must be filed within 3 working days of the date of his decision; that any response to any such appeal must be filed within 3 working days of the date of filing of the appeal; and that any reply to any motion filed with the Board itself in the first instance must be filed within 3 working days of the date of filing of the motion. *See* Decision No. 6, slip op. at 7, 62 FR at 29390; Decision No. 12, slip op. at 21-22, 62 FR at 39589.

A question has arisen respecting determination of "the date" of decisions issued by Judge Leventhal. When a written decision is issued, it is likely to have two dates (the "decided date" and the "service date") and may reference a third date (the date of the hearing at which Judge Leventhal orally announced his decision). *See, e.g.*, Decision No. 11, which has a service date of July 18 and a decided date of July 18, but which is described as "confirming" the oral rulings entered on the record at the hearing held on July 16.

We are issuing this decision to clarify that, with respect to any matter orally ruled on by Judge Leventhal from the bench,¹ the date of the hearing at which Judge Leventhal announces his decision will be regarded as "the date" of that decision, whether or not Judge Leventhal subsequently issues a written decision confirming his oral decision. We are issuing this clarification in order to facilitate expedited review of any appeals to decisions issued by Judge Leventhal.

Because this clarification addresses a matter left ambiguous in our prior decisions, we will apply it only to appeals from oral decisions issued after the date of service of this decision.

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

It is ordered:

1. For purposes of the requirement that any appeal to a decision issued by Judge Leventhal must be filed within 3 working days of the date thereof, the date of the hearing at which such decision is announced from the bench shall be regarded as "the date" of such decision.

2. Notwithstanding ordering paragraph 1, the appeal filed July 22, 1997, by American Electric Power, Atlantic City Electric Company, Delmarva Power & Light Company, and The Ohio Valley Coal Company shall be regarded as timely filed.

¹ We understand that Judge Leventhal intends to issue oral rulings from the bench with respect to all disputes brought to him for resolution.

3. This decision is effective on the date of service.

By the Board, Chairman Morgan and Vice Chairman Owen.

Vernon A. Williams
Secretary