

28900
SEC

SERVICE DATE - FEBRUARY 3, 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. 66

Decided: February 2, 1998

On January 23, 1998, the Northeast Ohio Four County Regional Planning and Development Organization (NEFCO), on behalf of METRO Regional Transit Authority (MRTA), filed a petition (designated as MRTA-3) for leave to file supplemental comments to the rebuttal of applicants.¹ In its petition, NEFCO maintains that its supplemental comments² are necessary to address misleading statements made by applicants and to respond to new evidence that became available after it filed comments and a request for conditions. In its supplemental comments, NEFCO argues that applicants, in their rebuttal statement, confused another transit authority for MRTA and that Conrail, while earlier indicating a willingness to negotiate over NEFCO's request for operating rights in Cleveland, OH, expressed adamant opposition to such a request on rebuttal.

Applicants maintain that NEFCO, as a party that filed only comments and a request for conditions, is not entitled to submit supplemental or rebuttal evidence as if it were a party that had filed a responsive or inconsistent application. Applicants further contend that statements made on rebuttal do not constitute new evidence that would permit NEFCO to file supplemental comments.

The petition will be denied and the supplemental statement will be rejected. Parties filing comments, protests, and requests for conditions, as in the case of NEFCO, are not permitted to file rebuttal in support of those pleadings. Parties filing inconsistent and/or responsive applications have

¹ "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.

² NEFCO tendered the supplemental comments (MRTA-4) with its petition for leave to file such comments.

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. Applicants' statements made on rebuttal here do not constitute new evidence. NEFCO's apparent position that any rebuttal constitutes new evidence would result in there being no end to evidentiary submissions. Moreover, because NEFCO's supplemental assertions are in the nature of argument in support of its request for conditions, it can submit those assertions in its brief due on or before February 23, 1998.

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

It is ordered:

1. NEFCO's petition to submit supplemental comments (MRTA-3) is denied. NEFCO's supplemental comments (MRTA-4) are rejected.
2. This decision is effective on its service date.

By the Board, Vernon A. Williams, Secretary.

Vernon A. Williams
Secretary

28900
SEC

SERVICE DATE - FEBRUARY 3, 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. 66

Decided: February 2, 1998

On January 23, 1998, the Northeast Ohio Four County Regional Planning and Development Organization (NEFCO), on behalf of METRO Regional Transit Authority (MRTA), filed a petition (designated as MRTA-3) for leave to file supplemental comments to the rebuttal of applicants.¹ In its petition, NEFCO maintains that its supplemental comments² are necessary to address misleading statements made by applicants and to respond to new evidence that became available after it filed comments and a request for conditions. In its supplemental comments, NEFCO argues that applicants, in their rebuttal statement, confused another transit authority for MRTA and that Conrail, while earlier indicating a willingness to negotiate over NEFCO's request for operating rights in Cleveland, OH, expressed adamant opposition to such a request on rebuttal.

Applicants maintain that NEFCO, as a party that filed only comments and a request for conditions, is not entitled to submit supplemental or rebuttal evidence as if it were a party that had filed a responsive or inconsistent application. Applicants further contend that statements made on rebuttal do not constitute new evidence that would permit NEFCO to file supplemental comments.

The petition will be denied and the supplemental statement will be rejected. Parties filing comments, protests, and requests for conditions, as in the case of NEFCO, are not permitted to file rebuttal in support of those pleadings. Parties filing inconsistent and/or responsive applications have

¹ "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.

² NEFCO tendered the supplemental comments (MRTA-4) with its petition for leave to file such comments.

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. Applicants' statements made on rebuttal here do not constitute new evidence. NEFCO's apparent position that any rebuttal constitutes new evidence would result in there being no end to evidentiary submissions. Moreover, because NEFCO's supplemental assertions are in the nature of argument in support of its request for conditions, it can submit those assertions in its brief due on or before February 23, 1998.

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

It is ordered:

1. NEFCO's petition to submit supplemental comments (MRTA-3) is denied. NEFCO's supplemental comments (MRTA-4) are rejected.
2. This decision is effective on its service date.

By the Board, Vernon A. Williams, Secretary.

Vernon A. Williams
Secretary