

SURFACE TRANSPORTATION BOARD

DECISION

STB Finance Docket No. 33388 (Sub-No. 101)

CSX TRANSPORTATION, INC.–PETITION FOR DECLARATORY ORDER

Decided: October 23, 2007

On October 4, 2007, CSX Transportation, Inc. (CSXT), filed a petition for declaratory order to remove uncertainty that a railroad has the authority under 49 U.S.C. 11321 to terminate a contract when it determines that the contract will interfere with the use of certain property necessary to carry out a Board-approved transaction. The contract in question is an agreement, dated February 20, 1986, between Frank Vitale and Francis Vitale (collectively, the Vitales) and Consolidated Rail Corporation (Conrail). According to CSXT's petition, the contract granted the Vitales an easement of air space above the underlying rail line for which the Vitales intended to build a multi-building apartment complex. Conrail's obligations under the contract passed to CSXT by virtue of its acquisition of certain Conrail assets, including the line described in the 1986 contract, through a series of Board decisions.¹

Under 49 CFR 1104.13(a), replies to the petition are due on October 24, 2007. By motion filed on October 15, 2007, the Vitales request an extension of time until November 6, 2007, for filing their reply. The Vitales state they have had insufficient time to prepare a response. The Vitales also state that CSXT consents to the extension.

The Vitales' request is reasonable and will be granted. Accordingly, the Vitales' reply to CSXT's petition will be due on or before November 26, 2007.

It is ordered:

1. The Vitales' extension request is granted, and their reply is due on or before November 26, 2007.

¹ CSX Corp. et al–Control–Conrail Inc. et al., 3 S.T.B. 196 (1998), and 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 [Petition for Supplemental Order], Decision No. 2, STB Finance Docket No. 33388 (Sub-No. 94) (STB served Nov. 7, 2003).

2. This decision is effective on its date of service.

By the Board, Vernon A. Williams, Secretary.

Vernon A. Williams
Secretary