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EB

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. 47

Decided: October 21, 1997

In Decision No. 33 in this proceeding, served September 17, 1997, we granted the petition for waiver or clarification filed by New Jersey Transit Corporation (NJT). In doing so, we agreed with NJT that it was not required to file a responsive application for the commuter rail operating rights that it intends to seek as conditions to the transaction proposed by applicants[1] because those operating rights would not ordinarily require our authorization. However, we also found that, because NJT's anticipated conditions could raise environmental issues, NJT must file, by October 1, 1997, either: (1) a verified statement that the proposed operations will have no significant environmental impact; or (2) an environmental report containing detailed environmental information regarding the proposed operations. We advised NJT to consult with our Section of Environmental Analysis (SEA) as early as possible regarding the appropriate environmental documentation.

On October 1, 1997, NJT filed a verified statement of its manager of environmental services, Steven M. Jurow, and a petition for clarification of Decision No. 33.[2] NJT indicates the Jurow verified statement explains that each of NJT's proposed passenger rail projects would require extensive environmental review under either federal or state law as a prerequisite to construction and operation. In view of this prospective environmental review, NJT asserts that we do not need to conduct additional environmental review of its proposed commuter operations. NJT asks us to confirm that the Jurow verified statement comports with the intent of Decision No. 33, by providing SEA with requisite information to facilitate the environmental review process.

Applicants argue that NJT's clarification request should be denied because NJT failed to comply with Decision No. 33. Applicants contend that the alternative environmental review processes described in the Jurow verified statement would not apply if NJT chose not to accept federal funds for its passenger operations or, in the case of environmental oversight by the state, if NJT's proposed operations occurred over existing railroad facilities. Applicants question the relevance or justification for NJT's proposed conditions and maintain that we would ignore our environmental review responsibilities if we granted NJT's clarification request.

DISCUSSION AND CONCLUSIONS

To allow us to fulfill our responsibilities under the National Environmental Policy Act (NEPA) and other environmental laws, we require responsive applicants to submit certain environmental information before, or at the time, they submit their applications. See Decision No. 6, slip op. at 3-4, 62 FR at 29388-89. Accordingly, to facilitate the environmental review process, responsive applicants must file either (1) a verified statement that the inconsistent or responsive application will have no significant environmental impact, or (2) a responsive environmental report

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[1] "Applicants" refers to CSX Corporation, CSX Transportation, Inc. (collectively with their wholly owned subsidiaries, CSX), Norfolk Southern Corporation, Norfolk Southern Railway Company (collectively with their wholly owned subsidiaries, NS), Conrail Inc., and Consolidated Rail Corporation (collectively, Conrail). By application filed June 23, 1997, applicants seek approval and authorization under 49 U.S.C. 11323-25 for: (1) the acquisition by CSX and NS of control of Conrail, and (2) the division of Conrail's assets by and between CSX and NS.

[2] NJT's verified statement and petition for clarification are designated, respectively, NJT-5 and NJT-6.

that contains detailed environmental information regarding the inconsistent or responsive application.[3] Although we found in Decision No. 33 that NJT need not file a responsive application, we required that it make a comparable environmental submission as if it were a responsive applicant so that we could comply with NEPA and related laws.

NJT's requested clarification will be denied. We believe that, if we were to grant NJT's request, we would, as applicants argue, lack the information we need to meet our environmental review responsibilities. Moreover, we cannot defer environmental review of a proposed condition because conditions are self-executing, not permissive. Therefore, we will provide NJT 10 days from the service date of this decision to file an environmental submission (either a verified statement that the proposed operations will have no significant environmental impact or an environmental report containing detailed environmental information regarding the proposed operations) as if it were a responsive applicant. If NJT does not provide adequate environmental information, it will be impossible for us to complete the appropriate underlying environmental review of NJT's requested conditions.

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

It is ordered:

1. NJT's petition for clarification is denied. Within 10 days from service of this decision, NJT must file an environmental submission (either a verified statement that the proposed operations will have no significant environmental impact or an environmental report containing detailed environmental information regarding the proposed operations).

2. The request (ASHT-8) by ASHTA Chemicals Inc., for a 5-day extension of time to file its verified statement of no significant impact, is granted.

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

By the Board, Chairman Morgan and Vice Chairman Owen.

Vernon A. Williams
Secretary

[3] In a request filed October 2, 1997, prospective responsive applicant ASHTA Chemicals Inc., seeks an extension of time to October 6, 1997, to file a verified statement of no significant impact. This request will be granted.