

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. 22

Decided: August 21, 1997

The protective order that was entered in this proceeding in Decision No. 1<sup>1</sup> generally provides, in pertinent part, that discovery material designated "HIGHLY CONFIDENTIAL" may be disclosed only to an outside counsel or an outside consultant, or to an employee of such outside counsel or outside consultant, who has executed the appropriate confidentiality undertaking. See Decision No. 1 at 4 (Protective Order, ¶8) and 7 (the Exhibit B undertaking applicable to highly confidential material).<sup>2</sup> In Decision No. 15, however, we modified the protective order entered in Decision No. 1 to allow in-house counsel for the United Transportation Union (UTU) to review "highly confidential" material, provided that such in-house counsel executes the appropriate undertaking and otherwise abides by the terms of the protective order.<sup>3</sup>

The Transportation Communications International Union (TCU), by motion (designated TCU-4) filed August 19, 1997, asks that the protective order be further modified so that its in-house counsel may also review material designated "highly confidential." TCU indicates that its General Counsel has signed the required confidentiality undertaking, but that applicants<sup>4</sup> have advised that they will not provide TCU's General Counsel access to documents designated "highly confidential" because Decision No. 15 covered only UTU.

Because there is, for present purposes, no material difference between TCU's in-house counsel and UTU's in-house counsel, we will further modify the protective order entered in Decision No. 1 to allow in-house counsel for TCU to review material designated "highly confidential," provided that such in-house counsel executes the Exhibit B undertaking and otherwise abides by the terms of the protective order. See Decision No. 15; see also BN/SF Dec. No. 12.

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<sup>1</sup> That protective order was thereafter revised, in ways not presently relevant, in Decision No. 4. See Decision No. 4, slip op. at 8.

<sup>2</sup> The "highly confidential" designation is reserved for "material containing shipper-specific rate or cost data or other competitively sensitive or proprietary information." See Decision No. 1 at 4 (Protective Order, ¶6).

<sup>3</sup> We relied, in Decision No. 15, on the precedent established in Burlington Northern Inc. and Burlington Northern Railroad Company--Control and Merger--Santa Fe Pacific Corporation and The Atchison, Topeka and Santa Fe Railway Company, Finance Docket No. 32549 (ICC served Mar. 13, 1995) (BN/SF Dec. No. 12) (modifying the protective order in that proceeding to allow in-house counsel for any labor organization or other non-commercial party that was not represented by outside counsel to review material designated "highly confidential").

<sup>4</sup> CSX Corporation, CSX Transportation, Inc., Norfolk Southern Corporation, Norfolk Southern Railway Company, Conrail Inc., and Consolidated Rail Corporation are referred to collectively as applicants.

For the reasons provided by TCU, we are expediting our issuance of this decision.  
See TCU-4 at 2.

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

It is ordered:

1. The protective order entered in Decision No. 1 is further modified to allow TCU's in-house counsel to review "highly confidential" material, provided that such in-house counsel executes the appropriate confidentiality undertaking and otherwise abides by the terms of the protective order.

2. This decision is effective on its service date.

By the Board, Chairman Morgan and Vice Chairman Owen.

Vernon A. Williams  
Secretary