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SERVICE DATE - NOVEMBER 28, 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. 56

Decided: November 26, 1997

This decision addresses the petition by Steel Warehouse Company, Inc. (SW), filed on November 20, 1997, for leave to file comments out of time.¹ Applicants² replied in opposition to SW's petition. See CSX/NS-166, filed on November 21, 1997.

Numerous responsive applications, comments, protests, and requests for conditions were filed with us on or before the October 21, 1997 due date for such filings. In its petition, SW indicates that it did not file comments by October 21, 1997, as required by our procedural schedule established in Decision No. 6,³ because it believed at the time that its interests would not be adversely affected by the proposed acquisition of Conrail. Also, as a small company, SW hoped to avoid the cost of submitting formal comments. SW states, however, that after the due date for comments passed, it discovered that it would be substantially disadvantaged by the loss of

¹ SW tendered its comments (SW-2) simultaneously with its petition for leave (SW-3).

² "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; and (2) the division of Conrail's assets by and between CSX and NS.

³ See Decision No. 6, served May 30, 1997, and published that day in the Federal Register at 62 FR 29387.

competitive rail service, as described more fully in its tendered comments.⁴ SW asserts that we previously granted similar requests to late-file comments in this proceeding and that, because applicants have until December 15, 1997, to respond to comments, applicants will not be prejudiced by our granting SW's petition and accepting its comments.

Applicants argue that SW has made no showing that it was prevented in any way from participating in this proceeding or following our established procedures. According to applicants, SW failed to mention that switching carriers have access to its plant and that therefore SW does not qualify as a shipper whose rail options would decline from two carriers to one carrier. Applicants submit that, even if SW's contentions are true regarding NS's refusal to negotiate and the carrier's imposition of service terms (claims that NS states are not true), SW had sufficient time to prepare and submit comments by the October 21 deadline. Applicants also contend that SW's request, filed nearly 1 month after the due date for comments, is untimely and that, contrary to SW's claim, applicants would be prejudiced by such a delayed filing.

SW's request will be denied. SW's petition and comments, filed almost 1 month after the established deadline, is much too late to be accepted into the record. Although we have granted previous extensions to file comments in this proceeding,⁵ the requests were made on or before the comment due date and our extensions were limited to only 10 days. We recognize that declining to accept this late-filed pleading might appear harsh, but SW's reasons for asking us to accept the pleading are by no means exceptional or compelling. Moreover, were we to accept the pleading at this late date, the meaning of deadlines in the proceeding would be much diminished and management of the proceeding would be seriously undermined.

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

It is ordered:

⁴ SW indicates in its comments that, because NS will acquire Conrail's rail line serving its facilities at South Bend, IN, SW will lose the competitive service provided by its current access to both carriers. According to SW, NS is unwilling to negotiate and has imposed significantly less favorable terms on its future rail service to SW's plant. To remedy SW's claimed loss of competitive rail service, SW asks us to require NS to grant trackage rights to Chicago SouthShore & South Bend Railroad Company between SW's South Bend plant and Chicago, IL.

⁵ See Decision No. 50, served October 24, 1997.

1. The petition in SW-3 for leave to file comments out of time is denied. The comments in SW-2 are rejected.

2. This decision is effective on its service date.

By the Board, Chairman Morgan and Vice Chairman Owen.

Vernon A. Williams
Secretary

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