

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. 46

Decided: October 17, 1997

The protective order that was entered in this proceeding in Decision No. 1¹ 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).²

By petition (designated CLEV-8) filed October 15, 1997, the City of Cleveland, Ohio (petitioner) asks that we modify the protective order to allow (1) Sharon Sobol Jordan, Director of Law, City of Cleveland, (2) Richard Horvath, Chief Assistant Director of Law, City of Cleveland, (3) Hunter Morrison, Director, Cleveland City Planning Commission, and (4) Robert N. Brown, Assistant Director, Cleveland City Planning Commission (collectively, the Designated Personnel) to review material designated Highly Confidential. Petitioner indicates: that the Designated Personnel are responsible for making recommendations to the Mayor and other City leaders with respect to the matters raised by this proceeding; and that, to fulfill their responsibilities, the Designated Personnel must have access to all the records in this proceeding, including those designated Highly Confidential.

By letter (not designated) filed by petitioner on October 17, 1997, petitioner has advised that petitioner and applicants³ have agreed that the protective order should be modified subject to this limitation: that the Designated Personnel shall be given access only to those Highly Confidential materials that will be produced in response to petitioners' First and Second Sets of Interrogatories and Document Requests to applicants.

In view of the agreement reached by petitioner and applicants, we will modify the protective order entered in Decision No. 1 to allow the Designated Personnel to review material designated Highly Confidential: (1) provided, in each instance, that such individuals execute the Exhibit B undertaking and otherwise abide by the terms of the protective order; and (2) further provided that the Designated Personnel shall be given access only to those Highly Confidential materials that will

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

² 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).

³ CSX Corporation (CSXC) and CSX Transportation, Inc. (CSXT) are referred to collectively as CSX. Norfolk Southern Corporation (NSC) and Norfolk Southern Railway Company (NSR) are referred to collectively as NS. Conrail Inc. (CRI) and Consolidated Rail Corporation (CRC) are referred to collectively as Conrail. CSX, NS, and Conrail are referred to collectively as applicants.

be produced in response to petitioners' First and Second Sets of Interrogatories and Document Requests to applicants.

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 each of petitioner's Designated Personnel to review Highly Confidential material: (1) provided, in each instance, that such individuals execute the Exhibit B undertaking and otherwise abide by the terms of the protective order; and (2) further provided that the Designated Personnel shall be given access only to those Highly Confidential materials that will be produced in response to petitioners' First and Second Sets of Interrogatories and Document Requests to applicants.

2. This decision is effective on its service date.

By the Board, Chairman Morgan and Vice Chairman Owen.

Vernon A. Williams
Secretary