

**SURFACE TRANSPORTATION BOARD DENIES "PEPCO" REQUEST FOR
MODIFICATION OF PROTECTIVE ORDER IN "CONRAIL" CONTROL CASE; CITES
EFFECT ON "CONRAIL" DISCOVERY PROCESS, LACK OF EXTRAORDINARY
CIRCUMSTANCES, UNNECESSARY DELAY IN "PEPCO" RAIL RATE COMPLAINT
CASE**

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"PEPCO" RAIL RATE COMPLAINT CASE**

Surface Transportation Board (Board) Chairman Linda J. Morgan announced today that it has denied a Potomac Electric Power Company (PEPCO) petition requesting the Board's modification of a protective order entered in the pending control proceeding in which CSX Corporation, Inc. (CSX) and Norfolk Southern Corporation (NS) are seeking authority to acquire and divide the assets of Consolidated Rail Corporation (Conrail)(collectively, applicants).

Under that protective order, In the interest of facilitating discovery and the prompt and efficient resolution of a proceeding, the Board may issue an order allowing the limited disclosure to parties to the case of certain confidential, proprietary, or commercially sensitive information, the unrestrictive release of which could cause serious competitive harm to certain parties in the case. counsel for various parties to the Conrail control case--including PEPCO's counsel--have obtained access to certain "confidential" and "highly confidential" information concerning the applicants, under the condition, among others, that the information will be used only in the control case. In its petition, PEPCO's counsel asked for the protective order to be amended so that information obtained by PEPCO in the control case could be used in PEPCO's pending railroad rate complaint Potomac Electric Power Company v. CSX Transportation, Inc., STB Docket No. 41989. against CSX. The Board denied PEPCO'S request, concluding that allowing such relief could have a chilling effect on the discovery process in the Conrail control proceeding, and that the request would not be granted in the absence of extraordinary circumstances, which the Board said PEPCO has failed to prove.

In reaching its decision, the Board emphasized that discovery in the PEPCO rate case has already been completed, and that PEPCO could have obtained much of the evidence it is seeking if it had requested it in the rate case in a timely manner. The Board noted that permitting access to such information "after the fact" would only serve to unduly delay resolution of the pending rate matter, a result that is both

unfair to the parties and contrary to Congressional directive.

In addition, the Board found that other, previously unavailable evidence sought by PEPCO regarding CSX traffic projections based on the CSX's proposed acquisition of Conrail lines is not inconsistent with evidence already submitted in the pending rate case, and thus does not present an extraordinary circumstance sufficient for the Board's modification of its protective order. In this regard, the Board concluded that PEPCO has not shown that access to such information is needed to impeach CSX's evidence in the rate case.

The Board issued its decision in the case entitled CSX Corporation and CSX Transportation, Inc., Norfolk Southern Corporation and Norfolk Southern Railway Company — Control and Operating/Leasing Agreements — Conrail Inc. and Consolidated Rail Corporation, STB Finance Docket No. 33388, Decision No. 18, on August 5, 1997.