

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. 207

 Decided March 13, 2002

The Board revises two environmental conditions (Conditions Nos. 11 and 51) to reflect the terms of a settlement agreement entered into by NS and Warren County, VA.

BY THE BOARD:

In *CSX Corp. et al.—Control—Conrail Inc. et al.*, 3 S.T.B. 196 (1998) (*Merger Dec. No. 89*),¹ Environmental Condition No. 11 of Appendix Q² requires Applicants, with the concurrence of the responsible local governments, to mitigate train wayside noise (locomotive engine and wheel/rail noise) at noise-sensitive receptor locations on certain rail line segments. Environmental Condition No. 11 further provides that this condition shall not apply to those communities that have executed Negotiated Agreements with Applicants that satisfy the communities' environmental concerns.³

¹ In *Merger Dec. No. 89*, we approved, subject to certain conditions, including environmental mitigation conditions, the acquisition of control of Conrail Inc. and Consolidated Rail Corporation (collectively, Conrail) and the division of Conrail's assets by CSX Corporation and CSX Transportation, Inc. (collectively, CSX), and by Norfolk Southern Corporation and Norfolk Southern Railway Company (collectively, NS). CSX and NS are referred to as Applicants.

² 3 S.T.B. at 588-90.

³ Environmental Condition No. 11 required compliance with this provision within 2 years of the effective date of *Merger Dec. No. 89*, or by August 22, 2000. The Board granted, at the request of NS, a number of extensions of the compliance date. See Decision No. 167, served on August 22, 2000 (granting NS' request for extension of the compliance date to August 22, 2001); Decision No. 196, served on August 21, 2001 (granting NS' request for a further extension of the compliance date to February 22, 2002, for rail line segments N-079 (Oak Harbor to Bellevue, OH) and N-085 (Bellevue to Sandusky Dock, OH), and to May 22, 2002, for rail line segments N-100 (Riverton (continued...))

On January 4, 2002, NS provided us with a copy of a Negotiated Agreement between NS and Warren County, VA, dated October 23, 2001, and accepted by Warren County on November 7, 2001. According to NS, this Negotiated Agreement effectuates the Board's preference for privately negotiated solutions stated in *Merger Dec. No. 89*.⁴ NS requests that Environmental Condition No. 11 be amended to reflect the parties' Negotiated Agreement by deleting the Warren County receptors located outside the Town of Front Royal from the receptors identified on the Riverton Junction to Roanoke, VA line segment (N-100),⁵ and that the Negotiated Agreement between NS and Warren County be added to the NS Subsection of Environmental Condition No. 51 of Appendix Q in Decision No. 89, which requires NS to comply with the terms of all Negotiated Agreements developed with states, local communities, and other entities regarding environmental issues associated with the Conrail transaction. *See Merger Dec. No. 89*.⁶ Warren County concurs with the request.

In view of the Negotiated Agreement between NS and Warren County, we will: (1) add the Negotiated Agreement to Environmental Condition No. 51 of Appendix Q of *Merger Dec. No. 89*; and (2) amend Environmental Condition No. 11 of Appendix Q of *Merger Dec. No. 89* to delete the receptors in Warren County located outside the incorporated limits of the Town of Front Royal from the receptors identified on the Riverton Junction to Roanoke, VA line segment because the noise mitigation for that community has been superseded by the NS/Warren County Negotiated Agreement.

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

³(...continued)

Junction to Roanoke, VA) and N-111 (Fola Mine to Deepwater, WV); and Decision No. 206, served on February 22, 2002 (granting NS' most recent request for a further 1-year extension of the compliance date to February 22, 2003, for rail line segments N-079 and N-085, and to May 22, 2003, for rail line segments N-100 and N-111).

⁴ 3 S.T.B. at 357.

⁵ Environmental Condition No. 11 does not specifically reference Warren County, but the Towns of Bentonville and Front Royal, which are listed in Environmental Condition No. 11, are in Warren County. NS advised that it sought an agreement with Front Royal but the local government declined and asked NS to contact the one receptor in Front Royal directly. The Warren County Negotiated Agreement covers all receptors identified by the Board as eligible for noise mitigation under Environmental Condition No. 11 in Warren County (including the receptor in the Town of Bentonville), with the exception of the one receptor within the incorporated limits of the Town of Front Royal.

⁶ 3 S.T.B. at 607-08.

It is ordered:

1. This proceeding is reopened.
2. In accordance with the Negotiated Agreement between NS and Warren County, VA, dated October 23, 2001, and accepted by Warren County on November 7, 2001, the following is added to the NS Subsection of Environmental Condition No. 51 of Appendix Q of *Merger Dec. No. 89*:

32. Warren County, Virginia, Negotiated Agreement dated October 23, 2001, and accepted by Warren County on November 7, 2001.

3. In addition, Environmental Condition No. 11 of Appendix Q of *Merger Dec. No. 89* is amended to delete the receptors in Warren County (including the receptor in the Town of Bentonville), with the exception of the one receptor within the incorporated limits of the Town of Front Royal, from the receptors identified on the Riverton Junction to Roanoke, VA line segment, because the noise mitigation for that community has been superseded by the NS/Warren County Negotiated Agreement.
4. This decision is effective on the date of service.

By the Board, Chairman Morgan and Vice Chairman Burkes.