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SERVICE DATE - FEBRUARY 5, 1999

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. 114

Decided: February 4, 1999

In Decision No. 89, served July 23, 1998, 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 Norfolk Southern Corporation and Norfolk Southern Railway Company (collectively NS). As pertinent here, Environmental Condition No. 21 of Appendix Q in Decision No. 89 requires CSX and NS to implement various mitigation measures in Northwestern Indiana (specifically, in the cities of East Chicago, Hammond, Gary, and Whiting, IN, also known as the Four City Consortium or the Four Cities). In Decision No. 96, served October 19, 1998, in response to the Four Cities' request for additional monthly reporting on the line segments in the Four Cities area, we modified Environmental Condition No. 21(i), which requires applicants to conduct regularly scheduled meetings with representatives of the Four Cities for 3 years. Our revised condition specifies that applicants will be required at those meetings to provide a status report on average train traffic volumes and speed on the applicable portions of the four rail segments in the area, and on the progress of operational and capital improvements required by us to address highway/rail at-grade crossing safety and delay issues in the Four Cities area.

On December 23, 1998, CSX provided us with a copy of a settlement agreement between CSX and the Four Cities executed on October 26, 1998. CSX explains that this settlement agreement incorporates the conditions imposed by us in Decision No. 89, Appendix Q, Environmental Condition No. 21(a)-(h), but supersedes the modification of Condition No. 21(i) in Decision No. 96, with respect to CSX. Specifically, although the settlement agreement does not change NS' reporting requirements, CSX will be required to provide the information specified in Section VI of the October 26, 1998 settlement agreement. By supplemental letter filed January 20, 1999, CSX requests that Condition No. 21(i) be amended to reflect the parties' settlement agreement and that the negotiated agreement between CSX and the Four Cities be added to the CSX Subsection of Environmental Condition No. 51 of Appendix Q in Decision No. 89, which requires CSX to comply with the terms of all listed negotiated agreements developed with states, local communities, and other entities regarding environmental issues associated with the Conrail transaction. CSX states that the Four Cities concur with its request.

In view of the October 26, 1998 settlement agreement between CSX and the Four Cities, and the parties' acceptance of the modified reporting format in Section VI of that agreement, we will: (1) add the negotiated agreement between CSX and the Four Cities to Condition No. 51 of Appendix Q of Decision No. 89; and (2) delete Condition Nos. 21(a)-(h) of Appendix Q of Decision No. 89 (which apply only to CSX and have been superseded by the parties' settlement agreement). In addition, we will renumber Condition No. 21(i) of Decision No. 96 as Environmental Condition No. 21 and modify that condition to apply only to NS. These changes do not affect the reporting requirements previously imposed on NS.

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

It is ordered:

1. This proceeding is reopened. In accordance with the settlement agreement between CSX and the Four Cities, executed on October 26, 1998, the following is added to the CSX Subsection of Environmental Condition No. 51 of Appendix Q of Decision No. 89:

10. The Cities of East Chicago, Hammond, Gary, and Whiting, IN (also known as the Four Cities Consortium or the Four Cities), dated October 26, 1998.

In addition, Environmental Condition No. 21 of Appendix Q of Decision No. 89 is deleted. Furthermore, Environmental Condition No. 21(i) of Decision No. 96 is renumbered as Environmental Condition No. 21, and the condition is modified to read as follows:

NS shall attend regularly scheduled meetings with representatives of the Four City Consortium for 3 years following the effective date of the Board's final decision. Representatives of the Indiana Harbor Belt Railroad shall also be invited. These meetings would provide a forum for assessing traffic delay, emergency response, and driver compliance with railway grade crossing warning systems through improved education and enforcement. At each meeting, NS shall provide a status report on average train traffic volumes and speeds on the applicable portions of rail line segment N-469, and on the progress of operational and capital improvements required by the Board to address highway/rail at-grade crossing safety and delay issues in the Four City Consortium area. CSX shall comply with the terms of its negotiated agreement with the Four City Consortium, as set forth in Environmental Condition No. 51.

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2. This decision shall be effective on the date of service.

By the Board, Chairman Morgan and Vice Chairman Clyburn.

Vernon A. Williams  
Secretary