

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. 206

Decided: February 22, 2002

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 the specific requirements of this condition “shall not apply to those communities that have executed Negotiated Agreements with Applicants that satisfy the communities’ environmental concerns.” Environmental Condition No. 11 requires compliance with this provision within 2 years of the effective date of Decision No. 89, or by August 22, 2000. The Board granted, at the request of NS, an extension of the compliance date until August 22, 2001, and most recently to February 22, 2002 (with respect to rail line segments N-079 and N-085 in Ohio), and to May 22, 2002 (with respect to rail line segments N-100 in Virginia and N-111 in West Virginia). See Decision No. 167, served on August 22, 2000, and Decision No. 196, served on August 21, 2001, respectively.

By letter received at the Board on February 19, 2002, NS has requested a further 1-year extension to complete compliance with Environmental Condition No. 11. Specifically, NS requests an extension until February 22, 2003, for rail line segments N-079 (Oak Harbor to Bellevue, OH) and N-085 (Bellevue to Sandusky Dock, OH), and an extension until May 22, 2003, for rail line segments N-100 (Riverton Junction to Roanoke, VA) and N-111 (Fola Mine to Deepwater, WV).

¹ In Merger Dec. No. 89, the Board 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 their assets by CSX Corporation and CSX Transportation, Inc. (collectively CSX), and Norfolk Southern Corporation and Norfolk Southern Railway Company (collectively, NS). CSX and NS are referred to collectively as Applicants.

² 3 S.T.B. at 588-90.

NS states that it has worked diligently to implement the requirements of Environmental Condition No. 11, and has obtained either Negotiated Agreements with the responsible local governments in the relevant communities or has settled its obligations under Environmental Condition No. 11 with the majority of the individual property owners determined by the Board to be eligible for noise mitigation. NS notes that it has completed all of its obligations under Environmental Condition No. 11 in Indiana through Negotiated Agreements with two responsible local governments. These Negotiated Agreements have been submitted to the Board and have been added to Environmental Condition No. 51.

With respect to Ohio, NS states that the responsible local governments of the five relevant communities with eligible noise-sensitive receptors located along the Ohio rail line segments N-079 and N-085 informed NS that, in lieu of entering into community Negotiated Agreements, they wished NS to contact the owners of the structures eligible for noise mitigation in their communities. NS has done so, and indicates that it has settled its obligations under Environmental Condition No. 11 with the owners of 93 eligible structures in those Ohio communities, and that only owners of 5 eligible structures have opted not to accept the settlement offers made by NS. For those 5 remaining structures in Ohio, NS states that it will offer to install sound insulation in satisfaction of its Environmental Condition No. 11 obligations.

With respect to Virginia, NS states that it has entered into Negotiated Agreements with eight responsible local governments. These Negotiated Agreements have been submitted to the Board, of which six have been added to Environmental Condition No. 51 and two are awaiting Board action. NS states that seven responsible local governments along N-100 informed NS that they wished NS to contact the owners of the structures verified to be eligible for noise mitigation. NS had discussions with the individual property owners, and, to date, has settled its obligations under Environmental Condition No. 11 with the owners of 26 eligible structures along N-100. NS states that it is currently engaged in settlement discussions with the owners of 11 remaining eligible structures along N-100 and hopes to complete that work in a few weeks. If, however, at the conclusion of those discussions, any owners opt not to accept the NS settlement offers, NS states that it will offer to install sound insulation in those structures.

With respect to West Virginia, NS states that it has entered into Negotiated Agreements with the responsible local governments of two communities along N-111. These Negotiated Agreements have been submitted to the Board and have been added to Environmental Condition No. 51. NS states that the local government of a third community along N-111 has not yet indicated its final preference for either a community Negotiated Agreement with NS or a request that NS contact the individual owners of any eligible structures. NS states that it has advised the remaining local government that the Board's Section of Environmental Analysis (SEA) and its third-party consultant will conduct a field survey in the next several weeks to verify the location of any eligible structures along N-111. According to NS, once the results of the SEA field survey are available, the responsible local government will advise NS whether it wishes to enter into a Negotiated Agreement or prefers that NS contact the owners of the eligible structures in

the community. If the local government selects the latter option, NS states that it will promptly initiate contacts with the individual property owners to make settlement offers, and if any property owners opt not to accept NS' settlement offers, NS will offer to install sound insulation in those structures determined by the SEA survey to be eligible for noise mitigation.

NS states that NS, CSX and Conrail have worked together with noise mitigation consultants to develop a protocol for a sound insulation program for the remaining eligible receptors, and that, once a protocol has been approved by SEA, NS expects to move expeditiously to implement the installation program. NS further states that, because there are many timing factors tied to the implementation and completion of a sound insulation program which will be applied to those eligible structures remaining at the conclusion of the community and individual property owner settlement processes, NS believes that a 1-year extension of the current deadlines for satisfaction of Environmental Condition No. 11 is reasonable and necessary and would serve the public interest by providing adequate time for consideration of the noise mitigation offered by NS and for the installation of the sound insulation treatments.

In light of the representations made by NS indicating substantial progress in compliance with Environmental Condition No. 11, and development of the protocol designed to complete compliance with Environmental Condition No. 11 expeditiously, the request for a 1-year extension of the current deadlines to February 22, 2003, and May 22, 2003, is reasonable and will be granted. The Board expects parties to complete their negotiations and conclude this process within the respective 1-year periods so that no further extensions would be necessary.

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

It is ordered:

1. The compliance deadline for NS in Environmental Condition No. 11 of Appendix Q of Merger Dec. No. 89 is extended 1 year until February 22, 2003, with respect to rail line segments N-079 (Oak Harbor to Bellevue, OH) and N-085 (Bellevue to Sandusky Dock, OH), and is extended 1 year until May 22, 2003, with respect to rail line segments N-100 (Riverton Junction to Roanoke, VA) and N-111 (Fola Mine to Deepwater, WV).

2. This decision is effective on the date of service.

By the Board, Vernon A. Williams, Secretary.

Vernon A. Williams
Secretary