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SEC

SERVICE DATE - AUGUST 21, 2001

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. 196

Decided: August 20, 2001

Environmental Condition No. 11 of Appendix Q of Decision No. 89¹ (Decision No. 89, slip op. at 401-03) 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: “Applicants shall certify compliance with this condition within 2 years of the effective date of the Board’s final decision. 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. At the request of NS, the Board extended the compliance date until August 22, 2001. See Decision No. 167, served on August 22, 2000.

By letter received at the Board on August 3, 2001, NS has requested extensions of the deadline provided for in Environmental Condition No. 11. NS requests a 6-month extension, until February 22, 2002, for rail line segments N-079 (Oak Harbor to Bellevue, OH) and N-085 (Bellevue to Sandusky Dock, OH), and a 9-month extension, until May 22, 2002, for rail line segments N-100 (Riverton Junction to Roanoke, VA) and N-111 (Fola Mine to Deepwater,

¹ 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). CSX and NS are referred to as Applicants.

WV).² NS states that, during the past year, it has continued to consult with the responsible local governments located along these NS rail line segments and those discussions have resulted in negotiated agreements with eight local governments in Indiana, Virginia, and West Virginia.³

NS advises that, with respect to its Environmental Condition No. 11 compliance obligations in Ohio, it is in the process of contacting the owners of the structures along rail line segments N-079 and N-085 that are eligible for mitigation and were verified by the Board's Section of Environmental Analysis (SEA) through a field survey that NS requested.⁴ NS states that a 6-month extension to February 22, 2002, would allow it to complete its negotiations with the owners of the eligible structures or to evaluate and implement feasible alternatives to satisfy its mitigation obligations under Environmental Condition No. 11.

Concerning its Environmental Condition No. 11 compliance obligations in Virginia and West Virginia, NS advises that it has entered into Negotiated Agreements with six local governments of communities located along rail line segments N-100 and N-111, is continuing its discussions with some remaining local communities, and will contact the individual owners of structures on these line segments as soon as it receives the proper authorization by other local governments. NS further states that it is awaiting the results of a field survey it requested SEA to conduct concerning the location of receptor locations eligible for noise mitigation under Environmental Condition No. 11 along rail line segment N-100 in Virginia. Also, NS advises that it will continue its discussions with the relevant local governments in Virginia and West Virginia that have not yet decided whether to enter into Negotiated Agreements to address Environmental Condition No. 11. NS states that a 9-month extension to May 22, 2002, would allow it to complete the implementation of Environmental Condition No. 11 through additional Negotiated Agreements with the remaining communities and alternative arrangements with individual property owners to satisfy Environmental Condition No. 11 where appropriate.

² In Environmental Condition No. 11, Appendix Q of Decision No. 89 (Decision No. 89, slip op. at 403), the Fola Mine-Deepwater, WV rail line segment was shown as "N-111." In the August 3, 2001 letter to the Board, NS referred to the Fola Mine-Deepwater, WV rail line segment as "N-101." Board staff contacted NS about the discrepancy and counsel for NS has confirmed that the correct reference for this rail line segment should have been "N-111."

³ According to NS, it has submitted the eight Negotiated Agreements to the Board and the Board has either incorporated said agreements under Environmental Condition No. 51 of Appendix Q of Decision No. 89, or the requests are currently pending before the Board.

⁴ NS advises that it has received the necessary governmental concurrence to permit it to contact the owners of the eligible structures verified by SEA, and that, as of July 30, 2001, NS has settled or resolved its Environmental Condition No. 11 mitigation obligations with respect to 89 receptor locations and that only 9 receptor locations remain to be resolved.

The requests for a 6-month extension to February 22, 2002, with respect to rail line segments N-079 and N-085, and a 9-month extension to May 22, 2002, with respect to rail line segments N-100 and N-111 are reasonable and will be granted.

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 Decision No. 89 is extended 6 months until February 22, 2002, with respect to rail line segments N-079 and N-085, and is extended 9 months until May 22, 2002, with respect to rail line segments N-100 and N-111.

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

By the Board, Vernon A. Williams, Secretary.

Vernon A. Williams
Secretary