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SERVICE DATE – FEBRUARY 8, 2002

This decision will be printed in the bound volumes of
the STB at a later date.

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. 204

Decided: February 7, 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 Q of Merger Decision No. 89² 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

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.

decision. This condition shall not apply to those communities that have executed Negotiated Agreements with Applicants that satisfy the communities' environmental concerns."³

On January 4, 2002, NS provided us with a copy of a Negotiated Agreement between NS and the City of Waynesboro, VA, dated October 23, 2001, and accepted by the City of Waynesboro on November 14, 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 City of Waynesboro receptors from the receptors identified on the Riverton Junction, VA, to Roanoke, VA line segment (N-100), and that the Negotiated Agreement between NS and the City of Waynesboro 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. 89.⁵ The City of Waynesboro concurs with the request.

In view of the Negotiated Agreement between NS and the City of Waynesboro, VA, 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 the City of Waynesboro from the receptors identified on the Riverton Junction, VA, to Roanoke, VA line segment because the noise mitigation for that community has been superseded by the NS/City of Waynesboro Negotiated Agreement.

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

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. At the request of NS, by decision served on August 22, 2000, this compliance date was extended to August 22, 2001. At the further request of NS, by decision served on August 21, 2001, the compliance deadline was extended to February 22, 2002, for rail line segments N-079 (Oak Harbor to Bellevue, OH) and N-085 (Bellevue to Sandusky Dock, OH), and was extended to May 22, 2002, for rail line segments N-100 (Riverton Junction to Roanoke, VA) and N-111 (Fola Mine to Deepwater, WV), to allow NS to complete implementation of the condition through additional negotiated solutions with the remaining communities and alternative arrangements with individual property owners to satisfy Environmental Condition No. 11 where appropriate.

⁴ 3 S.T.B. at 357.

⁵ 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 the City of Waynesboro, VA, dated October 23, 2001, and accepted by the City of Waynesboro on November 14, 2001, the following is added to the NS Subsection of Environmental Condition No. 51 of Appendix Q of Merger Dec. No. 89:
 31. City of Waynesboro, Virginia, Negotiated Agreement dated October 23, 2001, and accepted by the City of Waynesboro on November 14, 2001.
3. In addition, Environmental Condition No. 11 of Appendix Q of Merger Dec. No. 89 is amended to delete the receptors in the City of Waynesboro from the receptors identified on the Riverton Junction, VA, to Roanoke, VA line segment because the noise mitigation for that community has been superseded by the Negotiated Agreement.
4. This decision is effective on the date of service.

By the Board, Chairman Morgan and Vice Chairman Burkes.

Vernon A. Williams
Secretary