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SERVICE DATE - AUGUST 3, 2001

This decision will be included in the bound volumes of the STB printed reports 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. 193

Decided: August 2, 2001

Environmental Condition No. 11 of Appendix Q of Decision No. 89<sup>1</sup> (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.”<sup>2</sup>

On May 24, 2001, NS provided us with a copy of a Negotiated Agreement between NS and Nicholas County, WV, dated May 3, 2001, and accepted by Nicholas County on May 16, 2001. According to NS, this Negotiated Agreement effectuates the Board’s preference for privately negotiated solutions stated in Decision No. 89, slip op. at 153. NS requests that Environmental Condition No. 11 be amended to reflect the parties’ Negotiated Agreement by

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<sup>1</sup> 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 by Norfolk Southern Corporation and Norfolk Southern Railway Company (collectively, NS). CSX and NS are referred to as Applicants.

<sup>2</sup> Environmental Condition No. 11 required 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, by decision served on August 22, 2000, the compliance deadline in Environmental Condition No. 11 was extended 1 year until August 22, 2001, to allow NS to complete implementation of the condition through additional negotiated solutions with communities and an individualized noise mitigation program.

deleting the Nicholas County receptor from the receptors identified on the Fola Mine, WV, to Deepwater, WV line segment (N-111),<sup>3</sup> and that the Negotiated Agreement between NS and Nicholas 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 Decision No. 89, slip op. at 420-21. Nicholas County concurs with the request.

In view of the Negotiated Agreement between NS and Nicholas County, WV, we will: (1) add the Negotiated Agreement to Environmental Condition No. 51 of Appendix Q of Decision No. 89; and (2) amend Environmental Condition No. 11 of Appendix Q of Decision No. 89 to delete the receptor in Nicholas County from the receptors identified on the Fola Mine-Deepwater, WV line segment because the noise mitigation for that community has been superseded by the NS/Nicholas County Negotiated Agreement.

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.
2. In accordance with the Negotiated Agreement between NS and Nicholas County, WV, dated May 3, 2001, and accepted by Nicholas County on May 16, 2001, the following is added to the NS Subsection of Environmental Condition No. 51 of Appendix Q of Decision No. 89:

**29. Nicholas County, West Virginia, Negotiated Agreement dated May 3, 2001, and accepted by Nicholas County on May 16, 2001.**

3. In addition, Environmental Condition No. 11 of Appendix Q of Decision No. 89 is amended to delete the receptor in Nicholas County from the receptors identified on the Fola Mine-Deepwater, WV line segment because the noise mitigation for that community has been superseded by the Negotiated Agreement.

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<sup>3</sup> Environmental Condition No. 11 does not specifically reference Nicholas County. However, the noise receptor in Nicholas County is located outside the incorporated limits of the Town of Gauley Bridge, near Summersville. Accordingly, NS negotiated a separate agreement with Nicholas County. The Negotiated Agreement between NS and the Town of Gauley Bridge was addressed in Decision No. 190, served on July 6, 2001.

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

By the Board, Chairman Morgan, Vice Chairman Clyburn, and Commissioner Burkes.

Vernon A. Williams  
Secretary