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SEC

SERVICE DATE - AUGUST 22, 2002

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. 209

Decided: August 21, 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. 8(A) of Appendix Q² requires Applicants, in order to address potential safety impacts, to upgrade existing warning devices at 86 public highway/rail at-grade crossings as listed in the decision.³ As pertinent here, NS is required to install “4-Quadrant Gates, or Alternative Mitigation such as Median Barriers” at the existing at-grade crossing located at York Road/SR 74 in Mechanicsburg, Cumberland County, PA.⁴ Environmental Condition No. 8(A)

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 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.

² 3 S.T.B. at 580.

³ As provided in Environmental Condition No. 8(A), NS also may satisfy this requirement by entering into a Negotiated Agreement with the affected local jurisdiction and the state department of transportation to provide for alternative safety improvements in the vicinity of the identified highway/rail at-grade crossing that achieve at least an equivalent level of safety enhancement.

⁴ 3 S.T.B. at 586.

required compliance with this provision within 2 years of the effective date of Merger Dec. No. 89, or by August 22, 2000.⁵

By letter received at the Board on August 14, 2002, NS has requested an 8-month extension of the deadline provided for in Environmental Condition No. 8(A), until April 30, 2003, for the York Road/SR 74 at-grade crossing in Mechanicsburg, PA.

According to NS, the Pennsylvania Public Utility Commission (PPUC) convened a field conference in August 2001 to assess the crossing improvement needs at York Road, and the Commonwealth then recommended alternate safety measures to be installed at this crossing, subject to a formal finding by the Commonwealth and a negotiated agreement with NS providing for the installation of the alternate crossing improvements. After further discussions with PPUC, NS filed an application with the PPUC on December 17, 2001, seeking approval of crossing improvements to be installed at the York Road crossing consisting of new automatic flashing-light signals and short-arm gates.

NS states that a second field investigation and conference was convened by PPUC at the York Road at-grade crossing on April 19, 2002, to consider the recommended crossing improvements, and was attended by NS, PPUC, and representatives of the Pennsylvania Department of Transportation, GPU Energy, Sprint Long Distance, and Comcast Cable Communications, Inc.⁶ NS advises that it was determined at this field conference that the preferred upgrade to the York Road at-grade crossing should consist of the installation by NS of new automatic flashing-light warning signals supplemented by short-arm gates on each approach in accordance with Part 8 of the Manual on Uniform Traffic Control Devices.

⁵ The Board granted, at the request of NS, two extensions of the compliance date. See Decision No. 153, served on May 31, 2000 (granting NS' request for an extension of the compliance date to August 22, 2001); and Decision No. 197, served on August 22, 2001 (granting NS' request for a further extension of the compliance date to August 22, 2002).

⁶ According to NS, the following municipalities and companies were informed about the conference but did not attend: Monroe Township, Cumberland County, Teppco, United Water Pennsylvania, PPL Electric Utilities Corporation, Verizon Pennsylvania, Inc., Southern Middleton Township Municipal Authority, Monroe Township Municipal Authority, Buckeye Pipeline Company, and Columbia Gas Transmission.

NS advises that, in a May 21, 2002 letter issued by the PPUC,⁷ NS's application filed December 17, 2001, for alteration of the York Road at-grade crossing was approved. NS states that it has agreed to bear the cost of design, construction, and maintenance of the flashing lights and short-arm gates, and to maintain the rubber rail seal and railroad crossing surface at the grade crossing. NS further advises that, while construction work is in progress at the grade crossing, PPUC directed NS to establish and maintain any necessary highway and pedestrian traffic detours or traffic controls, and that PPUC directed NS to submit a situation plan, a detailed circuit plan, and a cost estimate for the crossing for review by interested parties and approval by PPUC. NS states that other installation and maintenance responsibilities at the grade crossing were agreed to be performed by the Pennsylvania Department of Transportation and Monroe Township. According to NS, PPUC established a December 31, 2003 deadline for completion of the alteration of the York Road at-grade crossing.

NS states that it is requesting the time extension in order to provide for the installation of the improvements at the York Road at-grade crossing ordered by the Commonwealth in the PPUC Secretary's letter. The request for an 8-month extension to April 30, 2003, for the York Road/SR 74 at-grade crossing is 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. 8(A) with respect to the York Road/SR 74 at-grade crossing in Mechanicsburg, Cumberland County, PA, is extended 8 months until April 30, 2003.
2. This decision is effective on the date of service.

By the Board, Vernon A. Williams, Secretary.

Vernon A. Williams
Secretary

⁷ NS enclosed a copy of the May 21, 2002 letter signed by James J. McNulty, Secretary, PPUC, in its submission to the Board requesting the time extension.