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SERVICE DATE - NOVEMBER 28, 2000

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. 176

Decided: November 27, 2000

Environmental Condition No. 11 of Appendix Q of Decision No. 89<sup>1</sup> (Decision No. 89, slip op. at 401-02), 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 August 24, 2000, CSX provided us with a copy of a Negotiated Agreement between CSX and Lorain County, OH, dated July 19, 2000, and accepted by Lorain County on July 25, 2000. CSX advises that the Berea, OH, to Greenwich, OH line segment traverses Lorain County and that several of the noise receptors identified in the Final Environmental Impact Statement for

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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 CSX, 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 CSX to complete implementation of the condition through additional negotiated solutions with communities and an individualized noise mitigation program.

mitigation are located in unincorporated areas of the county, including Eaton Estates.<sup>3</sup> According to CSX, the Negotiated Agreement with Lorain County<sup>4</sup> covers the receptors in these unincorporated areas of the county. CSX states that this Negotiated Agreement effectuates the Board's preference for privately negotiated solutions stated in Decision No. 89, slip op. at 153. CSX requests that Environmental Condition No. 11 be amended to reflect the parties' Negotiated Agreement by deleting Eaton Estates from the list of communities on the Berea, OH, to Greenwich, OH line segment (C-061), and that the Negotiated Agreement between CSX and Lorain County be added to the CSX Subsection of Environmental Condition No. 51 of Appendix Q in Decision No. 89, which requires CSX 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. Lorain County concurs with the request.

In view of the Negotiated Agreement between CSX and Lorain County, OH, 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 Eaton Estates because the noise mitigation for that community has been superseded by the CSX/Lorain 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 CSX and Lorain County, OH, dated July 19, 2000, and accepted by Lorain County on July 25, 2000, the following is added to the CSX Subsection of Environmental Condition No. 51 of Appendix Q of Decision No. 89:

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<sup>3</sup> CSX states that it has settled, or is in the process of settling, with several incorporated communities in Lorain County (including Grafton, Lagrange, Wellington, and Rochester).

<sup>4</sup> Because Environmental Condition No. 11 identifies Eaton Estates as a community that is to receive noise mitigation, but does not specifically reference Lorain County, a Board representative contacted county officials and CSX to confirm that Lorain County is the appropriate party to sign the Negotiated Agreement. On November 9, 2000, CSX submitted information from the State of Ohio that Eaton Estates, located in Eaton Township, Lorain County, is not a municipal corporation under Ohio law, and that, therefore, Lorain County is the appropriate party to sign this Negotiated Agreement with CSX.

**41. Lorain County, Ohio, Negotiated Agreement dated July 19, 2000, and accepted by Lorain County on July 25, 2000.**

3. In addition, Environmental Condition No. 11 of Appendix Q of Decision No. 89 is amended to delete the noise mitigation applicable to Eaton Estates, Lorain County, OH, because it has been superseded by the Negotiated Agreement.

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

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

Vernon A. Williams  
Secretary