

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. 210

Decided: May 14, 2003

In CSX Corp. et al.–Control–Conrail Inc. et al., 3 S.T.B. 196 (1998) (Merger Dec. No. 89),<sup>1</sup> Environmental Condition No. 11 of Appendix Q<sup>2</sup> 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 the specific requirements of 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 required compliance with this provision within 2 years of the effective date of Merger Dec. No. 89, or by August 22, 2000.<sup>3</sup>

---

<sup>1</sup> 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 their 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 collectively as Applicants.

<sup>2</sup> 3 S.T.B. at 588-90.

<sup>3</sup> The Board granted, at the request of NS, several extensions of the compliance date. See Decision No. 167, served on August 22, 2000 (granting NS’ request for an extension of the compliance date to August 22, 2001); Decision No. 196, served on August 21, 2002 (granting NS’ request for an extension of the compliance date to May 22, 2002, for the only two remaining rail line segments, N-100 and N-111); and Decision No. 206, served on February 22, 2002 (granting NS’ request for an extension of the compliance date to May 22, 2003, for rail line segments N-100 and N-111).

By letter received at the Board on April 10, 2003, NS has requested a further 4-month extension to and including September 22, 2003, to complete compliance with Environmental Condition No. 11 for rail line segments N-100 (Riverton Junction to Roanoke, VA) and N-111 (Fola Mine to Deepwater, WV). NS states that it has worked diligently to implement the requirements of Environmental Condition No. 11 for rail line segments N-100 and N-111.<sup>4</sup> Specifically, NS advises that it has conducted a field survey along rail line segment N-111 in West Virginia to verify the locations of the structures eligible for noise mitigation under Environmental Condition No. 11 outside the jurisdictional limits of the two communities that entered into negotiated agreements with NS. NS states that, at the request of the responsible West Virginia local government, it is in the process of contacting individual property owners of the structures eligible for noise mitigation under Environmental Condition No. 11 to discuss a settlement offer by NS.

According to NS, it is now in the process of undertaking a field survey along rail line segment N-100 in Virginia to verify the locations of the structures outside the jurisdictional limits of the communities that have entered into negotiated agreements with NS. After completion of that field survey, NS advises that it will contact the owners of the eligible structures along N-100 with whom it has not already settled to provide settlement offers to those remaining property owners. NS states that, when the settlement discussions have concluded, if any owner of an eligible structure along rail line segments N-100 or N-111 decides not to accept NS' settlement offer, the owner may instead elect to have sound insulation installed inside the structure by NS under a noise mitigation protocol developed by NS and CSX and approved by the Board's Section of Environmental Analysis for compliance with Environmental Condition No. 11.

NS advises that, because it has taken longer than anticipated to verify the eligible receptor locations along rail line segments N-100 and N-111 and to complete settlement discussions with the property owners, NS is requesting an additional 4-month extension of the current May 22, 2003 implementation date established by the Board to complete the Environmental Condition No. 11 noise mitigation requirements for these rail line segments.

The request for a 4-month extension to September 22, 2003, is reasonable and will be granted. However, the Board expects the parties to complete their negotiations and for NS to conclude the

---

<sup>4</sup> NS notes that a total of eight local governments in Virginia and two local governments in West Virginia have entered into negotiated agreements with NS, and that the Board has issued decisions accepting those negotiated agreements in satisfaction of Environmental Condition No. 11. In addition, NS has entered into individual settlement agreements with 40 eligible noise-sensitive receptor locations outside the jurisdictional boundaries of those eight local communities.

Environmental Condition No. 11 compliance process within the 4-month period so that no further extensions will be necessary.

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 Merger Dec. No. 89 is extended 4 months until September 22, 2003, with respect to rail line segments N-100 (Riverton Junction to Roanoke, VA) and N-111 (Fola Mine to Deepwater, WV).

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

By the Board, Vernon A. Williams, Secretary.

Vernon A. Williams  
Secretary