

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. 128

Decided May 26, 1999

The Board reopens this proceeding and (1) accepts the Ohio Department of Transportation's and CSX Corporation and CSX Transportation's (CSX) letters as a Negotiated Agreement; (2)(a) add the Negotiated Agreement to the Environmental Condition 51 of Appendix Q, and (b) deletes the Environmental Condition 29(A) of Appendix Q in *CSX Corp. et al. — Control — Conrail Inc. et al.*, 3 S.T.B. 196 (1998).

BY THE BOARD:

In *CSX Corp. et al.—Control—Conrail Inc. et al.*, 3 S.T.B. 196 (1998) (*Decision No. 89*), we required applicants¹ to complete and certify compliance with certain environmental conditions within 6 months of the effective date of the decision (by February 22, 1999). CSX and NS have filed several requests for extension of time to file these certifications. As pertinent here, pursuant to the request of CSX filed February 19, 1999, for a 3-month extension of time to allow for further analysis and consultation recommended by the Ohio Department of Transportation (ODOT), by decision served February 25, 1999 (*Decision No. 117*), the Board extended the due date until May 22, 1999, for compliance with Environmental Condition 29(A). Environmental Condition 29(A) requires CSX

¹ CSX Corporation, CSX Transportation, Inc., and their wholly owned subsidiaries, and also Consolidated Rail Corporation's wholly owned New York Central Lines LLC subsidiary, are referred to collectively as CSX. Norfolk Southern Corporation and Norfolk Southern Railway Company and their wholly owned subsidiaries, and also Consolidated Rail Corporation's wholly owned Pennsylvania Lines LLC subsidiary, are referred to collectively as NS. Conrail Inc. and Consolidated Rail Corporation, and also their wholly owned subsidiaries other than New York Central Lines LLC and Pennsylvania Lines LLC, are referred to collectively as Conrail or CR. CSX, NS, and Conrail are referred to collectively as applicants.

to "install warning signs with a flashing hazard light to notify motorists in advance that they are approaching the highway/rail at-grade crossing at U.S. Route 24." See, *Decision No. 89*, 3 S.T.B. at 598.

On May 18, 1999, CSX advised us that CSX and ODOT have agreed to three steps to be undertaken at the crossing in lieu of the installation directed in Environmental Condition 29(A). CSX provides an ODOT letter dated April 29, 1999, setting out the three steps, and CSX's letter of acceptance dated May 12, 1999. CSX states that both parties request that: (1) the parties' letters be treated as a Negotiated Agreement; (2) the Negotiated Agreement supersede Environmental Condition 29(A); and (3) Environmental Condition 51 be amended by adding the Negotiated Agreement to the list of Negotiating Agreements entered into by CSX.

The requests will be granted. Accordingly, we will: (1) treat the parties' letters as a Negotiated Agreement; (2) add the Negotiated Agreement to Environmental Condition 51 of Appendix Q of *Decision No. 89*; and (3) delete Environmental Condition 29(A) of Appendix Q of *Decision No. 89*, which has been superseded by the parties' 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. The ODOT letter dated April 29, 1999, and CSX's letter of acceptance dated May 12, 1999, are treated as a Negotiated Agreement.
3. The following is added to the CSX Subsection of Environmental Condition 51 of Appendix Q of *Decision No. 89*:

13. Ohio Department of Transportation, by letters dated April 29, 1999, and May 12, 1999.

In addition, Environmental Condition 29(A) of Appendix Q of *Decision No. 89* is deleted because it has been superseded by the parties' agreement.

4. This decision shall be effective on May 28, 1999.

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