

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. 129

Decided June 15, 1999

The Board grants joint requests to: (1) add the Railroad Corridor Agreement to Environmental Condition 51 of Appendix Q of *Decision No. 89*; and (2) delete the 20 CSX crossings in the State of Ohio from Environmental Condition 8(A) of Appendix Q of *Decision No. 89*, because that particular condition has been superseded by the parties' Railroad Corridor Agreement.

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 any negotiations with the State of Ohio (by and through the Ohio Attorney General, the Ohio Rail Development Commission, and the Public Utilities Commission of Ohio) regarding highway/rail at-grade crossing improvements within 120 days of the effective date of our decision (by December 20, 1998). See, *Decision No. 89*, Environmental Condition 8(B) set out at Appendix Q, 3 S.T.B. at 587. CSX and the State of Ohio have filed several requests for extension of time to comply with Environmental Condition 8(B), and the Board subsequently granted the requests. See, *Decision No. 108*, at 2 (directing applicants to complete such negotiations

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.

by February 18, 1999); *Decision No. 116*, at 2 (directing applicants to complete such negotiations by April 5, 1999);² and *Decision No. 120*, at 2 (directing applicants to complete such negotiations by June 1, 1999).

On May 27, 1999, CSX submitted to us a Railroad Corridor Agreement (Agreement), dated May 17, 1999, entered into by CSX, the Public Utilities Commission of Ohio (PUCO), and the Ohio Rail Development Commission (ORDC), regarding highway/rail at-grade crossing improvements in Ohio. CSX explains that: (1) the submission of the Agreement satisfies the requirement of Environmental Condition 8(B) of *Decision No. 89*, Appendix Q, 3 S.T.B. at 587; and (2) the Agreement is intended to supersede Environmental Condition 8(A) with respect to the 20 highway/rail at-grade crossings located in the State of Ohio which are listed under "CSX" in Environmental Condition 8(A) of *Decision No. 89*, Appendix Q, 3 S.T.B. at 581-82.

With respect to the Agreement, CSX advises that:

(1) as stated in Exhibit 3 to the Agreement, the warning system devices specified in Environmental Condition 8(A) had already been installed at eight crossings prior to execution of the Agreement. The crossings are: 518382H (LaRue), 155755Y (Deshler), 518488D (New London),³ 155794P (Tontogany), 155804T (Haskins), 155814Y (Perrysburg), 155818B (Perrysburg), and 155838M (Rossford);

(2) the Agreement provides that seven crossings listed in Environmental Condition 8(A) shall be upgraded to flashing lights and gates, which meets or exceeds the specifications for these crossings in Environmental Condition 8(A). The crossings are: 155760V (Deshler), 228774H (Fostoria), 228780L (Fostoria), 155789T (Weston), 155812K (Perrysburg), 155819H (Perrysburg), and 155839U (Rossford);

(3) the Agreement provides that four crossings listed in Environmental Condition 8(A) shall be evaluated for closure. The crossings are: 155798S (Tontogany), 155799Y (Tontogany), 155820C (Perrysburg), and 155840N (Rossford). Section I(A) of the Agreement indicates that the closure process shall include local community participation. If any of these crossings is not closed, PUCO/ORDC will evaluate the crossing to determine if lights and gates should be installed, except that the parties have agreed that crossing 155798S in Tontogany will be upgraded to flashing lights and gates if it is not closed, and

² As noted in *Decision No. 116*, at 1, the State of Ohio parties have advised that comprehensive corridor arrangements have already been concluded with NS.

³ CSX advises that the Townline Road crossing in New London was erroneously identified as crossing 514488D in Environmental Condition 8(A).

CSX will participate in funding installation or closure under the terms of the Agreement;

(4) the Agreement provides that one crossing listed in Environmental Condition 8(A) that is presently equipped with flashing lights and gates (155821J Perrysburg) shall be evaluated to determine whether further upgrade is warranted. Environmental Condition 8(A) specifies upgrade to "4-Quadrant Gates, or Alternative Mitigation such as Median Barriers."

As explained in Section I(B) of the Agreement, because these devices are not currently used in Ohio, further evaluation is required, and the Agreement provides that CSX will assist PUCO/ORDC and the local community in the evaluation; and

(5) the Agreement provides for the upgrade of warning system devices or for evaluation for closure at 33 crossings in addition to the 20 crossings listed in Environmental Condition 8(A).

In light of the Agreement, CSX, PUCO, and ORDC request that the 20 CSX crossings in Ohio be deleted from Environmental Condition 8(A), and that Environmental Condition 51 be amended by adding the Railroad Corridor Agreement to the list of Negotiated Agreements entered into by CSX.

The requests will be granted. Accordingly, we will: (1) add the Railroad Corridor Agreement to Environmental Condition 51 of Appendix Q of *Decision No. 89*; and (2) delete the 20 CSX crossings in Ohio from Environmental Condition 8(A) of Appendix Q of *Decision No. 89*, because that particular condition has been superseded by the parties' Railroad Corridor 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 Railroad Corridor Agreement among CSX, PUCO, and ORDC, executed on May 17, 1999, the following is added to the CSX Subsection of Environmental Condition 51 of Appendix Q of *Decision No. 89*:

14. The Public Utilities Commission of Ohio and the Ohio Rail Development Commission, "Railroad Corridor Agreement," dated May 17, 1999.

3. In addition, Environmental Condition 8(A) of Appendix Q of *Decision No. 89* is amended to delete the 20 CSX crossings in Ohio.
4. This decision shall be effective on June 16, 1999.

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