

## 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. 131

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*Decided July 12, 1999*

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The Board acknowledged the adoption, by Norfolk Southern Railway Company, the Ohio Rail Development Commission, and the Public Utilities Commission of Ohio, of a Railroad Corridor Safety Agreement.

BY THE BOARD:

Environmental Condition 8(A) of Appendix Q of *Decision No. 89*, 3 S.T.B. 196 at 580 (1998) requires applicants<sup>1</sup> to upgrade existing warning devices at 86 high-way/rail at-grade crossings, 9 of which are located on NS line segments in Ohio (at 585). Environmental Condition 8(A) further provides: "If Applicants execute a Negotiated Agreement with the affected local jurisdiction and the state department of transportation, they may implement alternate safety improvements in the vicinity of these identified highway/rail at-grade crossings that achieve at least an equivalent level of safety enhancement." at 580.

Environmental Condition 51 of Appendix Q of *Decision No. 89* (at 607) provides that applicants shall comply with the terms of all Negotiated Agreements developed with states, local communities, and other entities regarding environmental issues associated with the Conrail transaction.

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<sup>1</sup> In this decision, as in *Decision No. 89*: CSX Corporation and 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; and CSX, NS, and Conrail are referred to collectively as applicants.

NS has advised us that on February 10, 1999, it entered into a "Railroad Corridor Safety Agreement" with the Ohio Rail Development Commission (ORDC) and the Public Utilities Commission of Ohio (PUCO) regarding grade crossing safety improvements in Ohio. NS has provided a copy of the Agreement and has explained that ORDC and PUCO concur that the Agreement satisfies NS's obligations under Environmental Condition 8(A) of Appendix Q of *Decision No. 89* with respect to the provision of grade crossing safety upgrades by NS in Ohio.<sup>2</sup>

In accordance with our usual practice,<sup>3</sup> we will acknowledge the adoption of the NS/ORDC/PUCO Railroad Corridor Safety Agreement: (a) by adding that agreement to the NS Subsection of Environmental Condition 51; and (b) by deleting the 9 NS crossings in Ohio from Environmental Condition 8(A) because the parties' agreement supersedes NS's obligations under Environmental Condition 8(A) regarding grade crossing safety upgrades in Ohio.

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 Safety Agreement among NS, ORDC, and PUCO, executed on February 10, 1999, the following is added to the NS Subsection of Environmental Condition 51 of Appendix Q of *Decision No. 89* (3 S.T.B. at 607):
  13. The Ohio Rail Development Commission and the Public Utilities Commission of Ohio, "Railroad Corridor Safety Agreement," dated February 10, 1999.
3. In addition, Environmental Condition 8(A) of Appendix Q of *Decision No. 89* (3 S.T.B. at 585) is amended by deleting therefrom the 9 NS crossings in Ohio.
4. This decision is effective on July 13, 1999.

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

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<sup>2</sup> See NS's letter dated February 17, 1999, at 2.

<sup>3</sup> See, e.g., *Decision No. 129*, 4 S.T.B. 260 (1999).