

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. 135

Decided December 9, 1999

The Board revises two environmental conditions (Conditions Nos. 11 and 51) to reflect the terms of a settlement agreement entered into by CSX Corporation and CSX Transportation, Inc. and the Town of Etna Green, IN.

BY THE BOARD:

Environmental Condition No. 11 of Appendix Q of *Decision No. 89*¹ (3 S.T.B. at 588-89) 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."

¹ In *CSX Corp. et al. — Control — Conrail Inc. et al.*, 3 S.T.B. 196 (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 Norfolk Southern Corporation and Norfolk Southern Railway Company (collectively, NS). CSX and NS are referred to as Applicants.

On November 19, 1999, CSX provided us with a copy of a Negotiated Agreement between CSX and the Town of Etna Green, IN (Etna Green), dated October 27, 1999, and accepted by Etna Green on November 9, 1999. According to CSX, this Negotiated Agreement effectuates the Board's preference for privately negotiated solutions stated in *Decision No. 89*, 3 S.T.B. at 357-58. CSX requests that Environmental Condition No. 11 be amended to reflect the parties' Negotiated Agreement by deleting Etna Green from the list of communities on the Warsaw to Tolleston, IN line segment (C-026), and that the Negotiated Agreement between CSX and Etna Green 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*, 3 S.T.B. at 607-08. Etna Green concurs with the request.

In view of the Negotiated Agreement between CSX and Etna Green, 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 Etna Green because the noise mitigation for that community has been superseded by the CSX/Etna Green 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 the Town of Etna Green, IN, executed on November 9, 1999, the following is added to the CSX Subsection of Environmental Condition No. 51 of Appendix Q of *Decision No. 89*:

17. Town of Etna Green, Indiana, dated November 9, 1999.

3. In addition, Environmental Condition No. 11 of Appendix Q of *Decision No. 89* is amended to delete the noise mitigation applicable to Etna Green, IN, because it has been superseded by the Negotiated Agreement.

4. This decision is effective on December 10, 1999.

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