

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. 136

Decided December 27, 1999

The Board revises two environmental conditions (Conditions Nos. 11 and 51) to reflect the terms of a settlement agreement entered into by CSX and the City of Tontogany, OH.

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."

On December 13, 1999, CSX provided us with a copy of a Negotiated Agreement between CSX and the City of Tontogany, OH (Tontogany) dated November 22, 1999, and accepted by Tontogany on November 22, 1999. According to CSX, this Negotiated Agreement effectuates the Board's preference

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.

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 Tontogany from the list of communities on the Deshler to Toledo, OH line segment (C-065), and that the Negotiated Agreement between CSX and Tontogany 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. 607-08. Tontogany concurs with the request.

In view of the Negotiated Agreement between CSX and Tontogany, 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 Tontogany because the noise mitigation for that community has been superseded by the CSX/Tontogany 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 City of Tontogany, OH, executed on November 22, 1999, the following is added to the CSX Subsection of Environmental Condition No. 51 of Appendix Q of *Decision No. 89*:

18. City of Tontogany, Ohio, dated November 22, 1999.

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Q of *Decision No. 89* is amended to delete the noise mitigation applicable to Tontogany, OH, because it has been superseded by the Negotiated Agreement.

4. This decision is effective on December 30, 1999.

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