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SERVICE DATE - LATE RELEASE SEPTEMBER 22, 2003

SURFACE TRANSPORTATION BOARD

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. 211

Decided: September 22, 2003

In CSX Corp. et al.—Control—Conrail Inc. et al., 3 S.T.B. 196 (1998) (Merger Dec. No. 89),¹ Environmental Condition No. 11 of Appendix Q² 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 the specific requirements of this condition “shall not apply to those communities that have executed Negotiated Agreements with Applicants that satisfy the communities’ environmental concerns.” Environmental Condition No. 11 required compliance with this provision within 2 years of the effective date of Merger Dec. No. 89, or by August 22, 2000.³

By letter received at the Board on September 17, 2003, NS has requested a further extension of 6 months until March 22, 2004, to complete compliance with Environmental Condition No. 11 for rail line segments N-100 (Riverton Junction to Roanoke, VA) and N-111

¹ In Merger Dec. No. 89, the Board 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 their 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 collectively as Applicants.

² 3 S.T.B. at 588-90.

³ The Board granted, at the request of NS, several extensions of the compliance date, and the most recent extension was handled in Decision No. 210, served May 15, 2003, granting NS’ request for a further extension of the compliance date to September 22, 2003, for rail line segments N-100 and N-111.

(Fola Mine to Deepwater, WV). However, on September 22, 2003, the Board received another letter from NS advising that, since submitting the September 17 letter, NS has completed its obligations under Environmental Condition No. 11 for rail line segment N-111 in West Virginia, and no longer needs an extension of the September 22, 2003 compliance date for this rail segment.

NS advises that, in addition to obtaining Negotiated Agreements with eight local governments in Virginia and two local governments in West Virginia, NS has entered into settlement agreements with the owners of the eligible receptors earlier identified along N-100 and recently has undertaken additional field verification surveys along those portions of N-100 that are not subject to the Negotiated Agreements and other settlement agreements. NS further states that, as a result of the recent field verification surveys, it is now, with the assistance of local government representatives from each relevant jurisdiction, verifying ownership and eligibility criteria under Environmental Condition No. 11 for over 40 additional receptors. NS advises that it has entered into settlement agreements with the owners of a number of those receptors and is working diligently to contact the owners of the remaining receptors to provide settlement offers.

According to NS, the process of completing the field surveys and verifying ownership and other eligibility criteria under Environmental Condition No. 11 have required more time than anticipated. NS states that it is requesting an extension of 6 months to complete the settlement process and, if necessary, implement the noise mitigation protocol developed by NS and CSX and approved by the Board's Section of Environmental Analysis for any owners of eligible receptors along rail line segment N-100.

The request for a 6-month extension to March 22, 2004, is reasonable and will be granted. However, the Board expects the parties to complete their negotiations and for NS to conclude the Environmental Condition No. 11 compliance process within the 6-month period so that no further extensions will be necessary.

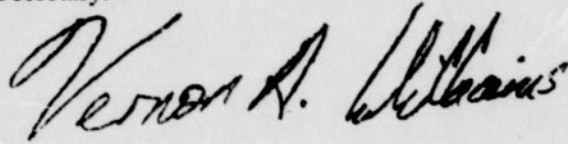
This action will not significantly affect either the quality of the human environment or the conservation of energy resources.

It is ordered:

1. The compliance deadline for NS in Environmental Condition No. 11 of Appendix Q of Merger Dec. No. 89 is extended 6 months until March 22, 2004, with respect to rail line segment N-100 (Riverton Junction to Roanoke, VA).

2. This decision is effective on the date of service.

By the Board, Vernon A. Williams, Secretary.

A handwritten signature in cursive script, reading "Vernon A. Williams".

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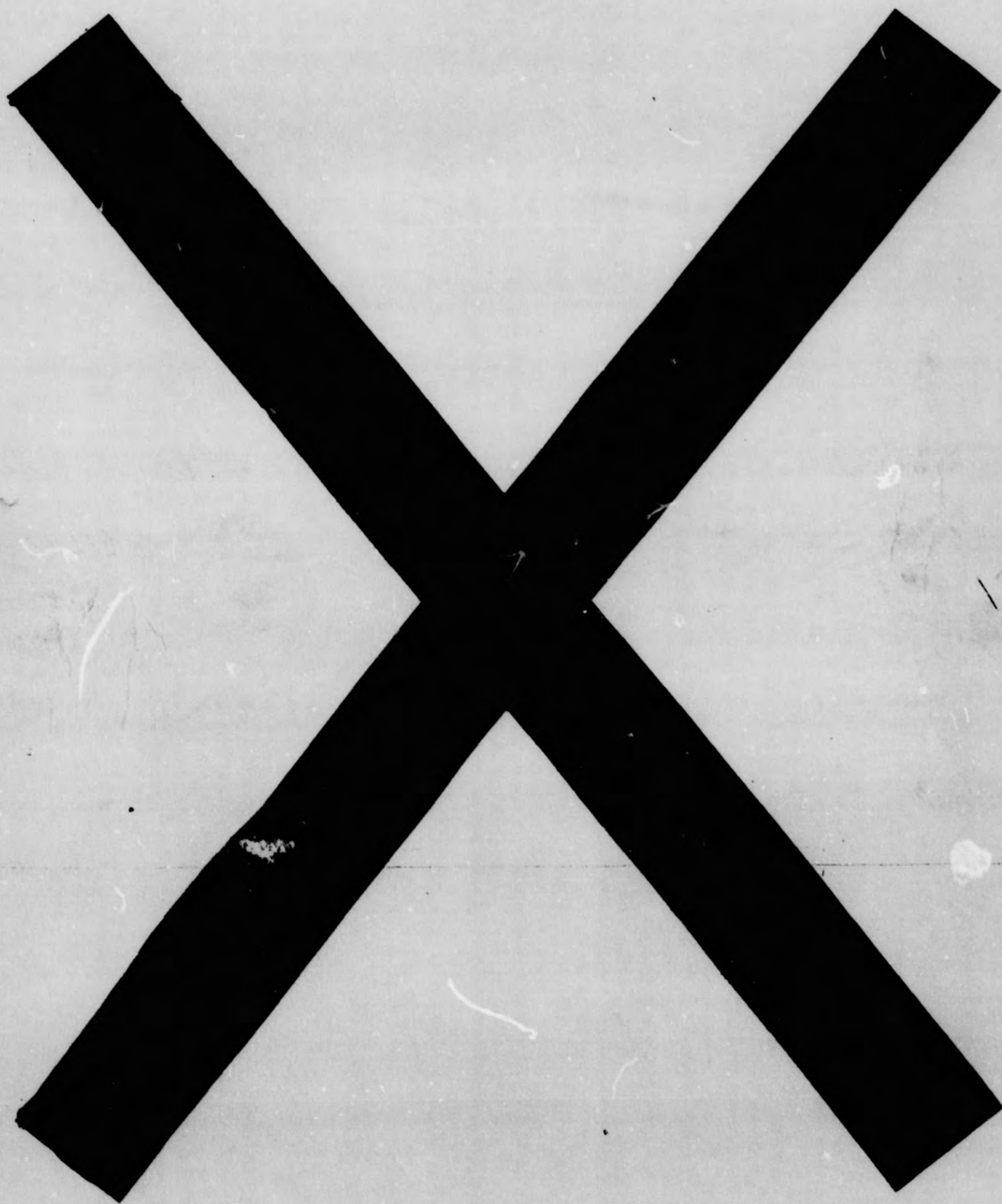
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SERVICE DATE - LATE RELEASE SEPTEMBER 28, 2001

SURFACE TRANSPORTATION BOARD

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. 199

Decided: September 28, 2001

In Decision No. 198 (served September 19, 2001), the Board ruled that it would not order Norfolk Southern Corporation and Norfolk Southern Railway Company (referred to collectively as NS) to keep open the Hollidaysburg Car Shops, located near Altoona, PA, beyond October 1, 2001, but the decision provided for certain conditions to be met by NS should it close the shops.

By motion filed September 27, 2001, the Commonwealth of Pennsylvania, the Transport Workers Union of America, the National Council of Firemen and Oilers/SEIU, the International Association of Machinists and Aerospace Workers, the International Brotherhood of Boilermakers and Blacksmiths, the International Brotherhood of Electrical Workers, the Sheet Metal Workers International Association, and the Transportation Communications International Union ask: (1) that the Board stay the effectiveness of Decision No. 198 pending judicial review; and (2) that the Board establish an expedited schedule, under which replies to the stay motion would be due October 2, 2001, and under which the Board would issue its decision on the merits of the stay motion by October 4, 2001. Movants indicate that an expedited schedule is needed in order to enable movants to know of the Board's ruling on the merits of the stay motion in time to seek, if necessary, a judicial stay from the United States Court of Appeals, prior to the date when NS would close the Car Shops.¹

In order to allow movants adequate time to seek a judicial stay if the Board declines to grant an administrative stay, any person that intends to submit a written reply to the stay motion is directed to file that reply with the Board no later than 5:00 p.m. on Tuesday, October 2, 2001. It is anticipated that, upon the receipt of any such replies, the Board will prepare a decision on the merits of the stay motion. It is further anticipated that the Board will endeavor to serve that

¹ Movants add that, although the date on which NS will be able to close the Car Shops is not yet known precisely, it is expected to be in mid-October following the conclusion of presently ongoing arbitration, and following the provision by NS of 15 days' notice of the closure of the Car Shops.

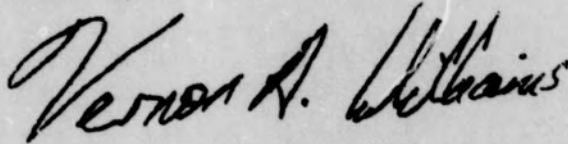
decision, and to post that decision on its website (www.stb.dot.gov), on Thursday, October 4, 2001, or shortly thereafter.

This action will not significantly affect either the quality of the human environment or the conservation of energy resources.

It is ordered:

1. Any interested person that intends to submit a written reply to the stay motion is directed to file that reply with the Board no later than 5:00 p.m. on Tuesday, October 2, 2001.
2. This decision is effective on the date of service.

By the Board, Vernon A. Williams, Secretary.

A handwritten signature in dark ink, appearing to read "Vernon A. Williams", is written over the printed name and title.

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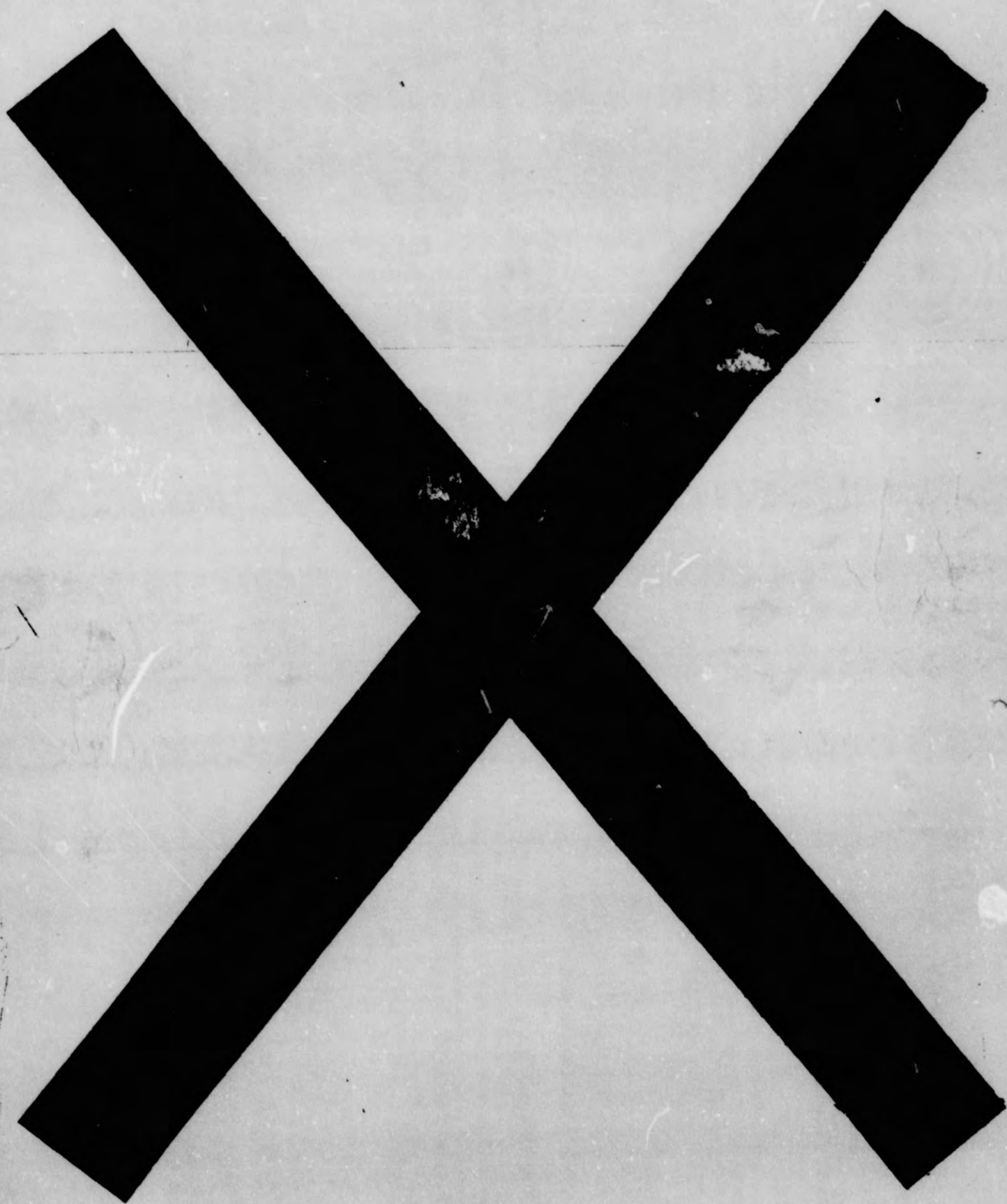
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SERVICE DATE - LATE RELEASE SEPTEMBER 19, 2001

SURFACE TRANSPORTATION BOARD

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. 198

Decided: September 18, 2001

In Decision No. 186, served May 21, 2001, we directed Norfolk Southern Corporation and Norfolk Southern Railway Company (collectively NS) to show why we should not order the carrier to cancel its announced shut-down on October 1, 2001, of its Hollidaysburg Car Shops (HCS) located in Hollidaysburg, PA, near Altoona.¹ Having considered the responses that we received from NS and others, we will not order NS to keep the HCS open beyond that date. However, given the unique circumstances here, should it proceed to close the HCS, we will require NS to extend the enhanced labor protection—consisting of “automatic certification” for New York Dock² benefits—that it is providing for the transferring Hollidaysburg employees of three shopcraft unions to the transferring employees represented by the other shopcraft unions. We will also provide that current HCS employees who are not offered a new position, or cannot exercise their seniority to claim a position, will be deemed to be eligible, upon dismissal, to the New York Dock economic benefits. Finally, we will require NS to report quarterly on its efforts to keep open the nearby Juniata Locomotive Shop (JLS) and on its efforts to work with the Altoona/Hollidaysburg area on alternative economic development projects.

¹ At the time of the May 21 decision, NS' proposed shut-down date for the HCS was September 1, 2001. Subsequently, in seeking an extension of the deadline for its showing, NS stated that it would not close the HCS before October 1, 2001.

² New York Dock Ry.—Control—Brooklyn Eastern Dist., 360 I.C.C. 60 (1979), *aff'd sub nom. New York Dock Ry. v. United States*, 609 F.2d 83 (2d Cir. 1979). The New York Dock conditions entitle employees to up to 6 years of monthly dismissal or displacement allowances to protect against a loss or diminution of wages resulting from a consolidation, and to relocation allowances.

BACKGROUND

In authorizing the Conrail transaction,³ the Board imposed, *inter alia*, a condition requiring CSX and NS to adhere to all of the representations they made during the course of the Conrail proceeding. Decision No. 89 at 176, ordering paragraph 19. In response to our order in Decision No. 186, NS contends that it never represented during the Conrail proceeding, either expressly or implicitly, that it intended to operate the HCS—without regard to business, economic, or operating conditions—for any minimum period of time after the Split Date. Rather, NS points to various occasions during the proceeding where it stated that continued operation of any of its facilities would depend on future circumstances that could not be predicted with any degree of certainty. While NS acknowledges that it stated an intention to continue operations at the HCS, to transfer car program work to the HCS, and to undertake an expanded “insourcing” effort to use the added car repair capacity at Hollidaysburg that it would gain from the Conrail transaction, the carrier asserts that its HCS-related statements in the Conrail application were simply good-faith expressions of how NS intended to operate the HCS and that it operated the HCS consistent with those intentions for 2 years after the Split Date.

NS states, however, that deteriorating economic conditions since the Split Date have forced the carrier to rethink its operations to make them compatible with current traffic levels, and to take various steps to reduce costs, increase efficiency, and restructure the company in a way that would better enable it to perform profitably. NS asserts that its decision to close the HCS—which, it notes, was neither the first facility nor the first large car shop affected—is but one of many steps that NS has had to take,⁴ and may have to take, and the carrier argues that it would be improper for us to intervene in these kinds of managerial decisions.

NS states that, while the Operating Plan that it submitted during the Conrail proceeding anticipated that it would expand its car fleet, NS has now found it necessary to contract its fleet, noting its announcement on January 23, 2001, that it would dispose of 12,000 surplus rail cars as part of its comprehensive restructuring effort, and its disposition, thus far, of 9,000 of those cars. The carrier asserts that, despite substantial efforts to “insource” work to the HCS, the HCS have

³ The “Conrail transaction” involved the joint acquisition of control of Consolidated Rail Corporation (Conrail) by CSX Corporation and CSX Transportation, Inc. (collectively CSX) and NS and the division by CSX and NS of Conrail’s assets, which the Board authorized in this proceeding on July 23, 1998 (Decision No. 89). The control transaction was consummated on August 22, 1998, and the division of Conrail’s assets took place on June 1, 1999 (referred to here as the Split Date).

⁴ Among the various actions that it has taken, NS points out, were a reduction in its dividend for the first time in its history and a 25% reduction in its management workforce.

continued to operate at about one-third capacity since the Split Date, and it claims that, when analyzed as a stand-alone facility, the HCS are losing a substantial amount of money (almost \$7 million in the year 2000). Because other car repair facilities on the NS system have the capacity (with the transfer of existing employees) to perform the kinds and amounts of repair work on NS equipment now being performed at Hollidaysburg, NS submits that it is entirely reasonable in current circumstances to close the HCS and transfer the work to the other facilities.

Acknowledging that the closure of the HCS would affect the local economy, NS further states that it has moved to mitigate those effects by exploring the possibility of selling the HCS to maintain employment in Blair County and working closely with the Altoona Blair County Development Corporation (ABCD Corporation) regarding the future of the HCS complex. NS also asserts that, because the work at the HCS is not being eliminated, but only transferred, "*each and every Hollidaysburg agreement employee will have the opportunity for continued NS employment.*" NS-84 at 15 (emphasis in original). To that end, NS notes that previously negotiated agreements provide for transferring employees represented by three of the union petitioners, should they be subsequently dismissed or displaced, to be automatically certified for New York Dock income protection for up to 6 years, and the carrier asserts that, if negotiated settlements are reached, it would be willing to so certify employees represented by the other shopcraft unions who transfer as a result of the HCS closing.⁵

Rail labor and the Commonwealth of Pennsylvania (collectively petitioners), on the other hand, jointly urge us to enforce NS' representations by requiring the carrier to retain the HCS for at least 5 years and to seek Board relief at the end of the 5-year period should it wish to close the HCS at that time. Petitioners contend that, in connection with the Conrail proceeding, NS made numerous and more unconditional public statements committing to the retention of, investment in, and expansion of work at the HCS, pointing especially to testimony of NS Chairman and Chief Executive Officer (CEO) David Goode before the United States Senate and other statements by Mr. Goode and NS officers, and also to various newspaper ads and press releases that were part of a carefully orchestrated campaign to win support for the Conrail proposal. Petitioners submit that these statements more clearly reveal NS' commitments, and, when read together with the carrier's more cautiously phrased record statements, were representations that petitioners could reasonably be expected to rely upon. As a result, petitioners argue, NS should not now be heard to argue that its commitments should not have been taken seriously.

⁵ Automatic certification, NS explains, means that transferring HCS employees would be relieved of the burden of demonstrating causation pursuant to Article I, § 11(e) of New York Dock, 360 I.C.C. at 88—i.e., that a subsequent dismissal or transfer to a lower-paying job had a nexus to the Conrail transaction—and thus would qualify for the New York Dock income protections upon those events.

Petitioners contend that NS' efforts to mitigate the damage that closure of the HCS would have on the Altoona area do not relieve NS of its commitments to the HCS, claiming that what NS is doing is no different from what any other large business would normally do when attempting to abandon and liquidate properties, and that its efforts hardly compensate for the closure of a facility with an annual payroll in excess of \$20 million. Petitioners also dispute that NS acted in good faith with respect to its commitments to HCS. Petitioners point out that NS failed to invest the \$4 million in the HCS that was promised and that the carrier has reduced utilization of the HCS through layoffs and deferral of maintenance on its own cars. Moreover, to the extent NS has claimed that the shut-down of the HCS is necessitated by a softened economy, petitioners point out that the current utilization of the HCS is not substantially below that in 1995, the base year used for NS' Operating Plan, and they submit that NS should not be permitted to break its commitments just because the economy has reverted to modest growth following a record period of expansion.

Finally, petitioners claim that NS' assertion that all HCS employees will have the opportunity for continued NS employment belies the fact that NS has identified only 156 jobs that would be available elsewhere on the NS system, while there are well over 300 employees currently working at the HCS. Petitioners submit that, if NS were truly attempting to make a good faith effort to mitigate the impact of its actions on HCS employees, it should, at a minimum, provide (1) that all HCS employees as of the Split Date (who have not resigned or retired) are covered by the New York Dock protective conditions in connection with the closing of the HCS and the transfer of HCS work to other locations; (2) that all those employees for whom there is no job will be protected for up to 6 years, and that NS will not assert that their furloughs were caused by other factors; and (3) that, for those who transfer, if they are furloughed at a new location, or if less senior employees at a transfer location are furloughed, they will be protected for up to 6 years and NS will not assert that New York Dock benefits are unavailable because the furloughs are due to other causes.⁶ Given the circumstances here, petitioners also suggest that, if we do not direct NS to retain and continue to operate the HCS, we could alternatively and appropriately determine that NS could be relieved of its commitments only if all HCS employees are deemed dismissed employees with no obligation to accept transfer to NS' other shops in order to retain the right to New York Dock benefits.

⁶ Petitioners assert that, although NS has negotiated automatic New York Dock certification for transferring employees represented by three unions, and stated that it would discuss such arrangements with others, NS has not agreed that employees who were unable to obtain jobs at other locations (over half the current work force) would receive benefits, and has not forsworn asserting in the future that subsequent furloughs at the HCS or at transfer locations are caused by factors other than the Conrail transaction or the HCS closing.

Several other parties also filed replies in response to NS.⁷ The Rail Labor Division of the Transportation Trades Department, AFL-CIO (RLD), Pennsylvania Senator Jubelirer, and Pennsylvania Representative Stern argue that we should require NS to adhere to its representations and require NS to retain and operate HCS for a significant period of time after October 1, 2001, while AES Eastern Energy (AESE) asserts that NS did not make representations, but only projections that should not be enforced here. Other parties—the Association of American Railroads (AAR), the National Industrial Transportation League (NITL), and The Fertilizer Institute (TFI)—take no position on the proposed shut-down of the HCS, but suggest ways in which our determination here should be guided.⁸

⁷ Correspondence was also received from U.S. Representatives Bill Shuster, Jack Quinn, and James L. Oberstar. Furthermore, on July 16, 2001, the Railroad Subcommittee of the Transportation and Infrastructure Committee of the U.S. House of Representatives held a hearing in Altoona on NS' announced closing of the HCS. By letter dated July 24, 2001, Rep. Quinn, the Chairman of the Subcommittee, forwarded to the Board: copies of the written testimony submitted to the Subcommittee; information in response to questions asked by Members at the hearing; a videotape submitted to the Subcommittee during the hearing and containing video clips of statements made by NS officials; and a videotape of the testimony obtained at the hearing. By letter dated August 17, 2001, Rep. Quinn further forwarded to the Board a copy of NS CEO David Goode's responses to certain additional information requests that had been made by Members of the Subcommittee. And, by letter dated September 14, 2001, Rep. Quinn also forwarded to the Board certain additional information provided by Mr. Thomas Lutton, President of the Transport Workers Union Local 2017.

⁸ AAR urges that the only representations that we should enforce are those that were made on the record, that projections in control applications should not be transformed into binding commitments, and that we should not second-guess or micro-manage railroad management decisions. AAR-1. On the other hand, NITL and TFI suggest that we should hold merging carriers to their representations as necessary to preserve the reliability, probity, and integrity of our merger proceedings, and that such an approach is consistent with our new merger rules issued in Major Rail Consolidation Procedures, STB Ex Parte No. 582 (Sub-No. 1) (STB served June 11, 2001), 66 FR 32582 (June 15, 2001). To that end, NITL submits that we should consider off-the-record statements that help to interpret ambiguous on-the-record statements, and that in assessing whether a statement is a representation, we should consider not only the wording, but also the circumstances (including its purpose and context, frequency, and identity of the speaker) and the nature of any contradictory statements. Holding a carrier to its representations, NITL submits, does not constitute micro-managing that carrier. NITL-17 at 8-11.

DISCUSSION AND CONCLUSIONS

It is evident that, during the course of and in connection with the Conrail proceeding, NS made a general commitment to the Altoona/Hollidaysburg area and to the employees of the HCS and the JLS that it would make these shops an important part of its post-transaction operations. This commitment was, in essence, both a commitment to the future economic well-being of the area and a commitment to the well-being of the individual employees of the HCS and the JLS, and it is supported by statements in the record and confirmed by other representations made by NS officials at the highest levels.⁹ NS has presented nothing here to change our prior conclusion that the carrier's representations both before and during the merger process could not help but reasonably lead State and local interests to believe that NS would keep the shops open and to rely on that commitment in determining how they participated in the merger process. Decision No. 186 at 6.

For more than 2 years following the Split Date, NS kept its commitment by operating the HCS and the JLS, and the carrier has continued to devote resources to the JLS and make that shop an integral part of NS' operations and to work with the Altoona/Hollidaysburg community, in light of its planned shut-down of the HCS, on economic development. However, since the Split Date, NS' circumstances, impacted by a declining National economy, have worsened system-wide, forcing the carrier to make numerous operational and financial adjustments. In this regard, there appears little basis to expect that there will be sufficient work—whether NS-generated or “insourced”—for the shops to operate at the higher capacity levels needed to make

⁹ See, e.g., Testimony of NS Chairman and CEO Goode before the Senate Subcommittee on Transportation and Related Agencies, March 20, 1997, in response to questions from Senator Arlen Specter, reproduced in Joint Petition of Rail Labor and the Commonwealth of Pennsylvania (March 28, 2001), Exhibit 6. See also Decision No. 186 at 5-6, noting NS' acknowledgment, in both the Conrail application and elsewhere, of the “unique repair/rebuild facilities” of the Hollidaysburg and Juniata shops, and the carrier's intention to invest and take other steps to “fully utilize shop capacity” in ways that would not just maintain, but expand, operations and employment opportunities in the area.

NS argues that it is improper for us to rely on its “extra-record” statements. These public statements, however, especially those made by the very highest NS officials, help provide background and context against which NS' “on-the-record” statements should be considered here. Our consideration of the NS public statements is within our discretion and is not precluded by our rules or by the Administrative Procedure Act. See 49 CFR 1114.1; 5 U.S.C. 556(e). See also, e.g., United States v. Pierce Auto Lines, 327 U.S. 515, 530 (1946) (Pierce); Oystershell Alliance v. USNRC, 800 F.2d 1201, 1204-05 (D.C. Cir. 1986) (Oystershell). Neither does our consideration of such statements unduly prejudice NS, as the carrier was given adequate opportunity to respond to the petitioners and supplement the record on the petition before us, which NS has done. See Pierce, 327 U.S. at 530; Oystershell, 800 F.2d at 1205.

the HCS viable. Under these circumstances, we will not require NS to invest previously promised funds or keep open the HCS after October 1, 2001, the carrier's announced shut-down date.

In reaching this decision, the Board is reflecting the fact that, although the HCS employees will be most affected by the shut-down of the shops, protecting the HCS employees by requiring NS to continue HCS operations for some time could adversely impact other NS shops and employees, particularly in view of the current economic conditions. Given the size of the HCS (one of the largest group of shops of its kind in the world), if we were to require them to be kept open, it could mean that other NS car facilities would have to be idled or shut down and employees at those facilities relocated to Hollidaysburg and elsewhere. In short, favoring the HCS and its employees could work to disfavor other NS employees and locations.

However, while we will not require the HCS to be kept open, given the unique circumstances here—including the generally perceived commitment made by NS to the Altoona/Hollidaysburg area and to HCS employees, made largely to garner important local and state-wide support for the Conrail transaction from business, labor, and political interests in Conrail's "home" State, and on which those interests reasonably relied—we are concerned that the normal procedures of the New York Dock conditions might not adequately protect the HCS employees here. Thus, should NS determine to proceed with closing the HCS, then pursuant to our authority under 49 U.S.C. 11324(c), 11326(a), 11327 and our express reservation of jurisdiction over the Conrail transaction, we will supplement the labor protective conditions that we previously imposed in Decision No. 89 by requiring NS to extend the enhanced labor protection—consisting of automatic certification for New York Dock benefits—that it is providing for transferring Hollidaysburg employees of three shopcraft unions to the transferring employees represented by the other shopcraft unions.¹⁰

We expect NS to honor its promise that "each and every Hollidaysburg agreement employee will have the opportunity for continued NS employment." But, to assure the equitable treatment of these employees should NS not offer all of them continued employment, we will further supplement our previous conditions by providing that current HCS employees who are not afforded the opportunity to transfer to new employment elsewhere on NS, or cannot exercise their seniority to obtain such a position, will be deemed to be eligible, upon dismissal, to New

¹⁰ We will not grant petitioners' request to eliminate the requirement that HCS employees must follow their work to new locations. As we explained in denying a request for similar relief in our decision approving the Conrail transaction, permitting rail carriers to transfer work and employees in carrying out a consolidation in exchange for providing income protection and other benefits is a "basic part of the bargain embodied" in the New York Dock conditions. Decision No. 89 at 128.

York Dock's economic benefits.¹¹ Should a dismissed employee be recalled and return to service on NS, his or her dismissal benefits would, of course, cease during re-employment. New York Dock, 360 at 86, § 6(b). As we noted in our decision approving the Conrail transaction, under New York Dock, once an employee has been dismissed, that employee may not be required to report to a work station that requires that employee to move his or her place of residence or else suffer the loss of dismissal payments. See Decision No. 89 at 128; New York Dock, 360 I.C.C. at 87, § 6(d).

Finally, we will require NS to report quarterly on its efforts to keep open the nearby JLS and on its efforts to work with the Altoona/Hollidaysburg area on alternative economic development projects. All of these requirements are meant to help ensure that NS will make every reasonable effort to fulfill its commitment to the Altoona/Hollidaysburg area and the involved employees.

This action will not significantly affect either the quality of the human environment or the conservation of energy resources.

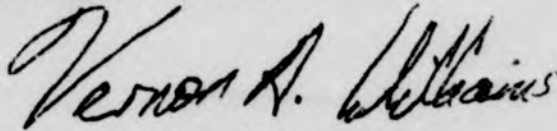
It is ordered:

1. The proceeding initiated in Decision No. 186 is discontinued.
2. Should it proceed to close its Hollidaysburg Car Shops on or after October 1, 2001, NS must extend to all transferring HCS employees the "automatic certification" for New York Dock benefits that it previously negotiated with certain HCS employees, with remaining details to be worked out through negotiation between NS and the involved unions.
3. All current HCS employees who are not afforded the opportunity to transfer to a new position elsewhere on NS, or cannot exercise their seniority to claim such a position, are deemed to be eligible, upon their dismissal, for dismissal allowances pursuant to the New York Dock conditions.
4. NS must report on a periodic basis on its efforts to keep open the Juniata Locomotive Shop and on its efforts to work with the Altoona/Hollidaysburg area on alternative economic development projects. Such reports will be due on a quarterly basis, on the first business day of each calendar quarter. The first such report will be due on January 2, 2002.

¹¹ The supplemental conditions provided here are afforded only to current HCS employees, not to those furloughed prior to NS' announcement on February 21, 2001, that it would close the HCS. We make no determination here as to whether former employees are entitled to New York Dock protection, but leave that issue to arbitration, if necessary, under the normal procedures of New York Dock.

5. This decision is effective on the date of service.

By the Board, Chairman Morgan, Vice Chairman Clyburn, and Commissioner Burkes. Vice Chairman Clyburn commented with a separate expression.



Vernon A. Williams
Secretary

Vice Chairman Clyburn commenting:

While inferences can be made from this decision, the Board should be clear on how it views the nature of the "representations clause", which was initially placed in a footnote in the UP/SP merger Dec. No. 44¹ and progressed to a more prominent position in an ordering paragraph in the Conrail Dec. No. 89.² Is this clause a catchall phrase stating merely a goal for which to strive? Does it indicate a hard and fast rule to be interpreted literally, with no exceptions or consideration of extenuating circumstances? Maybe the interpretation of the representations clause depends on the specific wording of the representation or the context in which it is given. Further do we generally afford more flexibility to representations regarding matters of the operating plan or long term expenditures (because of the tentative nature of such projections), yet are more strict in our construction when dealing with specific services to particular customers? While I understand the conclusion the Board reaches in this difficult case, the Board, particularly in light of the importance of merger issues in this new paradigm, should give more guidance on how it interprets its own ordering paragraph.

Finally, although this decision does not order protection for employees at other locations, I believe the Board and the carrier should be diligent in protecting those less senior employees at a transfer location as well as the HCS employees should the shops be closed.

¹"During the course of this proceeding, applicants have made numerous representations to the effect that certain points will be covered, certain services will be provided, and so on. Some of these representations relate to the terms of the BNSF agreement; others do not. Applicants must adhere to all of their representations."

² "Applicants must adhere to all of the representations they made during the course of this proceeding, whether or not such representations are specifically referenced in this decision."

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SERVICE DATE - AUGUST 22, 2002

SURFACE TRANSPORTATION BOARD

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. 209

Decided: August 21, 2002

In CSX Corp. et al.—Control—Conrail Inc. et al., 3 S.T.B. 196 (1998) (Merger Dec. No. 89),¹ Environmental Condition No. 8(A) of Appendix Q² requires Applicants, in order to address potential safety impacts, to upgrade existing warning devices at 86 public highway/rail at-grade crossings as listed in the decision.³ As pertinent here, NS is required to install "4-Quadrant Gates, or Alternative Mitigation such as Median Barriers" at the existing at-grade crossing located at York Road/SR 74 in Mechanicsburg, Cumberland County, PA.⁴ Environmental Condition No. 8(A)

¹ In Merger Dec. No. 89, the Board 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.

² 3 S.T.B. at 580.

³ As provided in Environmental Condition No. 8(A), NS also may satisfy this requirement by entering into a Negotiated Agreement with the affected local jurisdiction and the state department of transportation to provide for alternative safety improvements in the vicinity of the identified highway/rail at-grade crossing that achieve at least an equivalent level of safety enhancement.

⁴ 3 S.T.B. at 586.

required compliance with this provision within 2 years of the effective date of Merger Dec. No. 89, or by August 22, 2000.⁵

By letter received at the Board on August 14, 2002, NS has requested an 8-month extension of the deadline provided for in Environmental Condition No. 8(A), until April 30, 2003, for the York Road/SR 74 at-grade crossing in Mechanicsburg, PA.

According to NS, the Pennsylvania Public Utility Commission (PPUC) convened a field conference in August 2001 to assess the crossing improvement needs at York Road, and the Commonwealth then recommended alternate safety measures to be installed at this crossing, subject to a formal finding by the Commonwealth and a negotiated agreement with NS providing for the installation of the alternate crossing improvements. After further discussions with PPUC, NS filed an application with the PPUC on December 17, 2001, seeking approval of crossing improvements to be installed at the York Road crossing consisting of new automatic flashing-light signals and short-arm gates.

NS states that a second field investigation and conference was convened by PPUC at the York Road at-grade crossing on April 19, 2002, to consider the recommended crossing improvements, and was attended by NS, PPUC, and representatives of the Pennsylvania Department of Transportation, GPU Energy, Sprint Long Distance, and Comcast Cable Communications, Inc.⁶ NS advises that it was determined at this field conference that the preferred upgrade to the York Road at-grade crossing should consist of the installation by NS of new automatic flashing-light warning signals supplemented by short-arm gates on each approach in accordance with Part 8 of the Manual on Uniform Traffic Control Devices.

⁵ The Board granted, at the request of NS, two extensions of the compliance date. See Decision No. 153, served on May 31, 2000 (granting NS' request for an extension of the compliance date to August 22, 2001); and Decision No. 197, served on August 22, 2001 (granting NS' request for a further extension of the compliance date to August 22, 2002).

⁶ According to NS, the following municipalities and companies were informed about the conference but did not attend: Monroe Township, Cumberland County, Teppco, United Water Pennsylvania, PPL Electric Utilities Corporation, Verizon Pennsylvania, Inc., Southern Middleton Township Municipal Authority, Monroe Township Municipal Authority, Buckeye Pipeline Company, and Columbia Gas Transmission.

NS advises that, in a May 21, 2002 letter issued by the PPUC,⁷ NS's application filed December 17, 2001, for alteration of the York Road at-grade crossing was approved. NS states that it has agreed to bear the cost of design, construction, and maintenance of the flashing lights and short-arm gates, and to maintain the rubber rail seal and railroad crossing surface at the grade crossing. NS further advises that, while construction work is in progress at the grade crossing, PPUC directed NS to establish and maintain any necessary highway and pedestrian traffic detours or traffic controls, and that PPUC directed NS to submit a situation plan, a detailed circuit plan, and a cost estimate for the crossing for review by interested parties and approval by PPUC. NS states that other installation and maintenance responsibilities at the grade crossing were agreed to be performed by the Pennsylvania Department of Transportation and Monroe Township. According to NS, PPUC established a December 31, 2003 deadline for completion of the alteration of the York Road at-grade crossing.

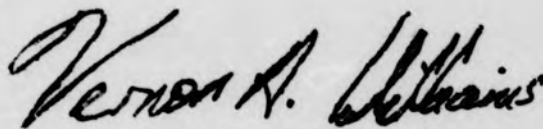
NS states that it is requesting the time extension in order to provide for the installation of the improvements at the York Road at-grade crossing ordered by the Commonwealth in the PPUC Secretary's letter. The request for an 8-month extension to April 30, 2003, for the York Road/SR 74 at-grade crossing is reasonable and will be granted.

This action will not significantly affect either the quality of the human environment or the conservation of energy resources.

It is ordered:

1. The compliance deadline for NS in Environmental Condition No. 8(A) with respect to the York Road/SR 74 at-grade crossing in Mechanicsburg, Cumberland County, PA, is extended 8 months until April 30, 2003.
2. This decision is effective on the date of service.

By the Board, Vernon A. Williams, Secretary.



Vernon A. Williams
Secretary

⁷ NS enclosed a copy of the May 21, 2002 letter signed by James J. McNulty, Secretary, PPUC, in its submission to the Board requesting the time extension.

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SERVICE DATE - LATE RELEASE AUGUST 22, 2001

SURFACE TRANSPORTATION BOARD

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. 197

Decided: August 22, 2001

Environmental Condition No. 8(A) of Appendix Q of Decision No. 89¹ (Decision No. 89, slip op. at 393-99) requires Applicants, in order to address potential safety impacts at highway/rail at-grade crossings, to upgrade existing warning devices at 86 public highway/rail at-grade crossings as listed in the decision.² As pertinent here, NS is required to: (1) install "Flashing Lights" at the at-grade crossing at Loomis Street in the Town of Ripley, Chautauqua County, NY; and (2) install "4-Quadrant Gates, or Alternative Mitigation such as Median Barriers" at the at-grade crossing located at York Road/SR 74 in Mechanicsburg, Cumberland County, PA. See Decision No. 89, slip op. at 398. Environmental Condition No. 8(A) requires compliance with this provision within 2 years of the effective date of Decision No. 89, or by August 22, 2000. At the request of NS, the Board extended the compliance date for the at-grade crossings at Loomis Street and York Road/SR 74 until August 22, 2001. See Decision Nos. 153 and 157, served on May 31, 2000, respectively.

¹ In Decision No. 89, served July 23, 1998, the Board 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.

² Alternatively, as provided in Environmental Condition No. 8(A), NS may satisfy this requirement by entering into a Negotiated Agreement with the affected local jurisdiction and the state department of transportation to provide for alternative safety improvements in the vicinity of the identified highway/rail at-grade crossing that achieve at least an equivalent level of safety enhancement.

By letter received at the Board on August 17, 2001, NS has requested a 1-year extension of the deadline provided for in Environmental Condition No. 8(A), until August 22, 2002, for the Loomis Street and York Road/SR 74 at-grade crossings.

With respect to the Loomis Street at-grade crossing, NS states that the New York Department of Transportation (NYDOT) had determined that the preferred alternative for this crossing was closure, and NYDOT asked NS not to install improvements at this crossing until it convened a Regulatory Hearing to address the closure issue. NS advises that, because local support for closure of this crossing has diminished, it does not know what plans by NYDOT and the Town of Ripley for this crossing will be approved. NS further advises that NYDOT has scheduled on-site meetings on August 14 and August 15, 2001, to discuss the Loomis Street and other grade crossings, but that NS does not know the outcome of those meetings. Accordingly, NS requests a 1-year extension of time so that a decision may be reached by NYDOT and the Town of Ripley in the interim. NS also states that it may seek a Negotiated Agreement with NYDOT and the Town of Ripley with respect to the Loomis Street at-grade crossing.

With respect to the York Road/SR 74 at-grade crossing, NS advises that the Pennsylvania Department of Transportation (PennDOT) determined that neither 4-quadrant gates nor median barriers are appropriate for this at-grade crossing due to the road configuration, and that the Pennsylvania Public Utilities Commission would have to conduct a formal review of the proposed crossing improvements and then issue findings and an order. NS states that the Commonwealth recently convened a field conference to evaluate the York Road/SR 74 at-grade crossing and that the Commonwealth has recommended that certain alternative measures be implemented in lieu of the installation of either 4-quadrant gates or median barriers.³ NS states that it is requesting an additional 1-year extension until August 22, 2002, in which to satisfy the requirements of Environmental Condition No. 8(A) for the York Road/SR 74 at-grade crossing so that the Commonwealth may formalize the preferred upgrades for York Road. NS also states that it may seek a Negotiated Agreement with the Commonwealth reflecting the alternative improvements.

The requests for a 1-year extension to August 22, 2002, for the Loomis Street and York Road/SR 74 at-grade crossings are reasonable and will be granted.

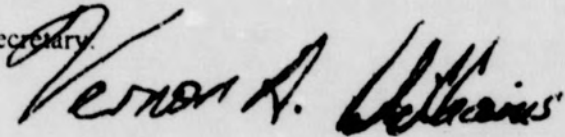
This action will not significantly affect either the quality of the human environment or the conservation of energy resources.

³ NS advises that the alternative measures would include extending the crossing gate arms, relocating the signal in the southeast quadrant of the crossing, installing an additional signal in the southwest quadrant of the crossing, and installing 12-inch light units on all signals. NS also states that PennDOT would install pavement markings at the crossing and active advance warning signals in the existing roadway approach that is not currently so equipped.

It is ordered:

1. The compliance deadline for NS in Environmental Condition No. 8(A) with respect to the Loomis Street at-grade crossing in the Town of Ripley, Chautauqua County, NY, is extended 1 year until August 22, 2002.
2. The compliance deadline for NS in Environmental Condition No. 8(A) with respect to the York Road/SR 74 at-grade crossing in Mechanicsburg, Cumberland County, PA, is extended 1 year until August 22, 2002.
3. This decision is effective on the date of service.

By the Board, Vernon A. Williams, Secretary

A handwritten signature in black ink, appearing to read "Vernon A. Williams", is written over the printed name and title.

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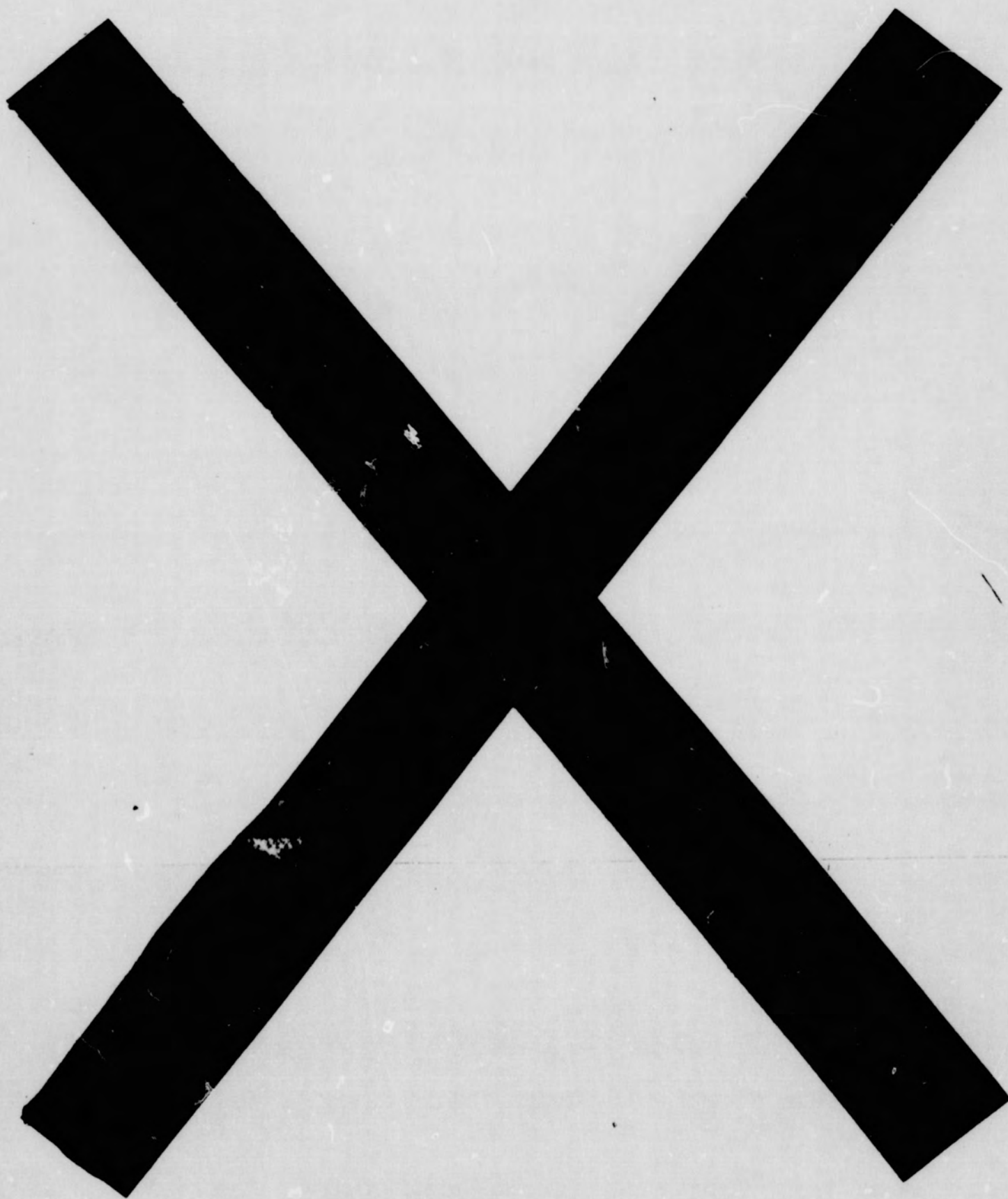
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SERVICE DATE - AUGUST 21, 2001

SURFACE TRANSPORTATION BOARD

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. 195

Decided: August 20, 2001

Environmental Condition No. 11 of Appendix Q of Decision No. 89 (Decision No. 89, slip op. at 401-03) requires Applicants (including Consolidated Rail Corporation (CR), which administers the CSX/NS Shared Assets Areas), 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.¹ 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." Environmental Condition No. 11 requires compliance with this provision within 2 years of the effective date of Decision No. 89, or by August 22, 2000. At the request of CSX and CR, the Board extended the compliance date until August 22, 2001. See Decision No. 166, served on August 22, 2000.

By letter received at the Board on August 3, 2001, CSX, on behalf of CSX and CR, has requested a 6-month extension of the deadline provided for in Environmental Condition No. 11, until February 22, 2002. CSX states that it has worked diligently during the past 3 years to implement Environmental Condition No. 11, and has submitted to the Board 31 Negotiated Agreements that have been added to Environmental Condition No. 51 of Appendix Q of Decision No. 89.

CSX further advises that it has entered into Negotiated Agreements covering all of the eligible receptors identified in Environmental Condition No. 11 that are located in Indiana and

¹ In Decision No. 89, served July 23, 1998, we approved, subject to certain conditions, including environmental mitigation conditions, the acquisition of control of Conrail Inc., and CR, and the division of their assets by CSX Corporation and CSX Transportation, Inc. (collectively CSX), and Norfolk Southern Corporation and Norfolk Southern Railway Company (collectively, NS). CSX, NS, and CR are referred to collectively as Applicants for purposes of this decision.

Ohio, and that it has entered into agreements with nine responsible governments in Pennsylvania.²

CSX also advises that CR has worked diligently to comply with Environmental Condition No. 11 with respect to the eligible receptors in the Detroit Shared Assets Area, that CR has entered into Negotiated Agreements with two responsible local governments, and that these Negotiated Agreements have been submitted to the Board and have been added to Environmental Condition No. 51.³

CSX states that CSX and CR are continuing to have discussions with the owners of the remaining structures, and, if an agreement is not reached with particular property owners in the near future, CSX and CR will promptly evaluate feasible alternatives for implementing Environmental Condition No. 11 with respect to the structures. Accordingly, CSX states that a 6-month extension to February 22, 2002, would allow CSX and CR to complete negotiations with the owners of the eligible structures or to implement Environmental Condition No. 11 through alternative means if a negotiated agreement is not reached.

The request for a 6-month extension to February 22, 2002, is reasonable and will be granted.

This action will not significantly affect either the quality of the human environment or the conservation of energy resources.

It is ordered:

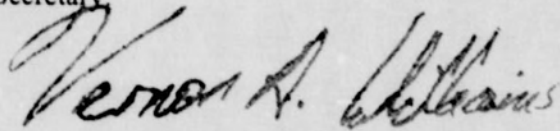
1. The compliance deadline for CSX and CR in Environmental Condition No. 11 of Appendix Q of Decision No. 89 is extended 6 months until February 22, 2002.

² CSX states that Elizabeth and Rostraver Townships, PA, requested CSX to contact individual property owners, and that CSX has contacted them and has entered into agreements with all but 6 property owners. CSX notes that there are 28 structures eligible for noise mitigation in these townships, and that it has satisfied Environmental Condition No. 11 with respect to almost 99% of the structures eligible for noise mitigation under this condition.

³ CSX advises that Allen Park, Ash Township, and Lincoln Park, MI, requested CR to contact individual property owners, and that CR has contacted them and has entered into an agreement with one property owner.

2. This decision is effective on the date of service.

By the Board, Vernon A. Williams, Secretary

A handwritten signature in dark ink, appearing to read "Vernon A. Williams". The signature is written in a cursive, flowing style with some capitalization.

Vernon A. Williams
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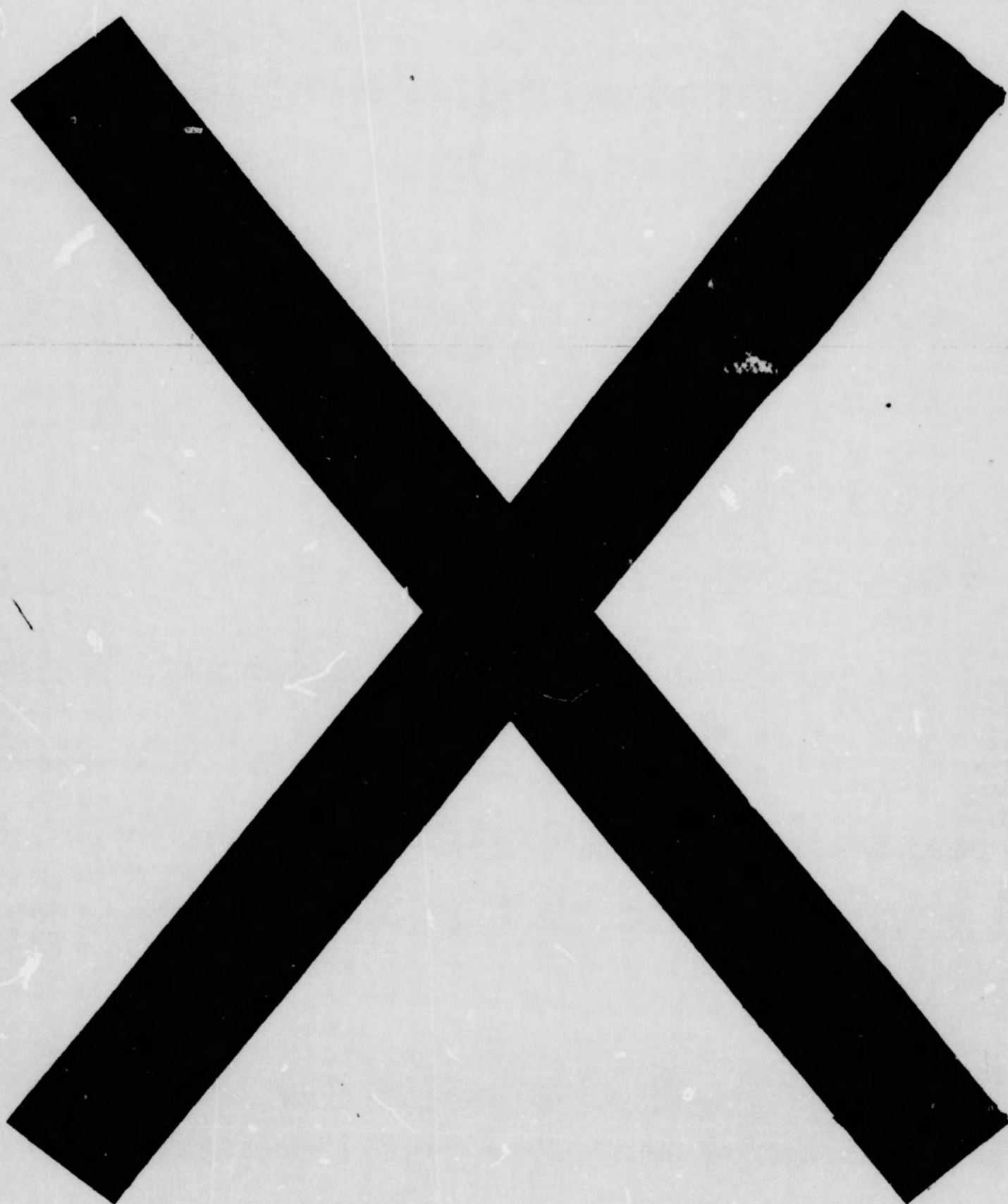
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SERVICE DATE - AUGUST 21, 2001

SURFACE TRANSPORTATION BOARD

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. 196

Decided: August 20, 2001

Environmental Condition No. 11 of Appendix Q of Decision No. 89¹ (Decision No. 89, slip op. at 401-03) 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." Environmental Condition No. 11 requires compliance with this provision within 2 years of the effective date of Decision No. 89, or by August 22, 2000. At the request of NS, the Board extended the compliance date until August 22, 2001. See Decision No. 167, served on August 22, 2000.

By letter received at the Board on August 3, 2001, NS has requested extensions of the deadline provided for in Environmental Condition No. 11. NS requests a 6-month extension, until February 22, 2002, for rail line segments N-079 (Oak Harbor to Bellevue, OH) and N-085 (Bellevue to Sandusky Dock, OH), and a 9-month extension, until May 22, 2002, for rail line segments N-100 (Riverton Junction to Roanoke, VA) and N-111 (Fola Mine to Deepwater,

¹ In Decision No. 89, served July 23, 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.

WV).² NS states that, during the past year, it has continued to consult with the responsible local governments located along these NS rail line segments and those discussions have resulted in negotiated agreements with eight local governments in Indiana, Virginia, and West Virginia.³

NS advises that, with respect to its Environmental Condition No. 11 compliance obligations in Ohio, it is in the process of contacting the owners of the structures along rail line segments N-079 and N-085 that are eligible for mitigation and were verified by the Board's Section of Environmental Analysis (SEA) through a field survey that NS requested.⁴ NS states that a 6-month extension to February 22, 2002, would allow it to complete its negotiations with the owners of the eligible structures or to evaluate and implement feasible alternatives to satisfy its mitigation obligations under Environmental Condition No. 11.

Concerning its Environmental Condition No. 11 compliance obligations in Virginia and West Virginia, NS advises that it has entered into Negotiated Agreements with six local governments of communities located along rail line segments N-100 and N-111, is continuing its discussions with some remaining local communities, and will contact the individual owners of structures on these line segments as soon as it receives the proper authorization by other local governments. NS further states that it is awaiting the results of a field survey it requested SEA to conduct concerning the location of receptor locations eligible for noise mitigation under Environmental Condition No. 11 along rail line segment N-100 in Virginia. Also, NS advises that it will continue its discussions with the relevant local governments in Virginia and West Virginia that have not yet decided whether to enter into Negotiated Agreements to address Environmental Condition No. 11. NS states that a 9-month extension to May 22, 2002, would allow it to complete the implementation of Environmental Condition No. 11 through additional Negotiated Agreements with the remaining communities and alternative arrangements with individual property owners to satisfy Environmental Condition No. 11 where appropriate.

² In Environmental Condition No. 11, Appendix Q of Decision No. 89 (Decision No. 89, slip op. at 403), the Fola Mine-Deepwater, WV rail line segment was shown as "N-111." In the August 3, 2001 letter to the Board, NS referred to the Fola Mine-Deepwater, WV rail line segment as "N-101." Board staff contacted NS about the discrepancy and counsel for NS has confirmed that the correct reference for this rail line segment should have been "N-111."

³ According to NS, it has submitted the eight Negotiated Agreements to the Board and the Board has either incorporated said agreements under Environmental Condition No. 51 of Appendix Q of Decision No. 89, or the requests are currently pending before the Board.

⁴ NS advises that it has received the necessary governmental concurrence to permit it to contact the owners of the eligible structures verified by SEA, and that, as of July 30, 2001, NS has settled or resolved its Environmental Condition No. 11 mitigation obligations with respect to 89 receptor locations and that only 9 receptor locations remain to be resolved.

The requests for a 6-month extension to February 22, 2002, with respect to rail line segments N-079 and N-085, and a 9-month extension to May 22, 2002, with respect to rail line segments N-100 and N-111 are reasonable and will be granted.

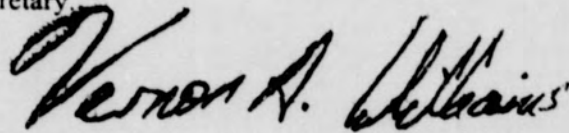
This action will not significantly affect either the quality of the human environment or the conservation of energy resources.

It is ordered:

1. The compliance deadline for NS in Environmental Condition No. 11 of Appendix Q of Decision No. 89 is extended 6 months until February 22, 2002, with respect to rail line segments N-079 and N-085, and is extended 9 months until May 22, 2002, with respect to rail line segments N-100 and N-111.

2. This decision is effective on the date of service.

By the Board, Vernon A. Williams, Secretary.

A handwritten signature in black ink, appearing to read "Vernon A. Williams". The signature is fluid and cursive, with the first name "Vernon" being the most prominent part.

Vernon A. Williams
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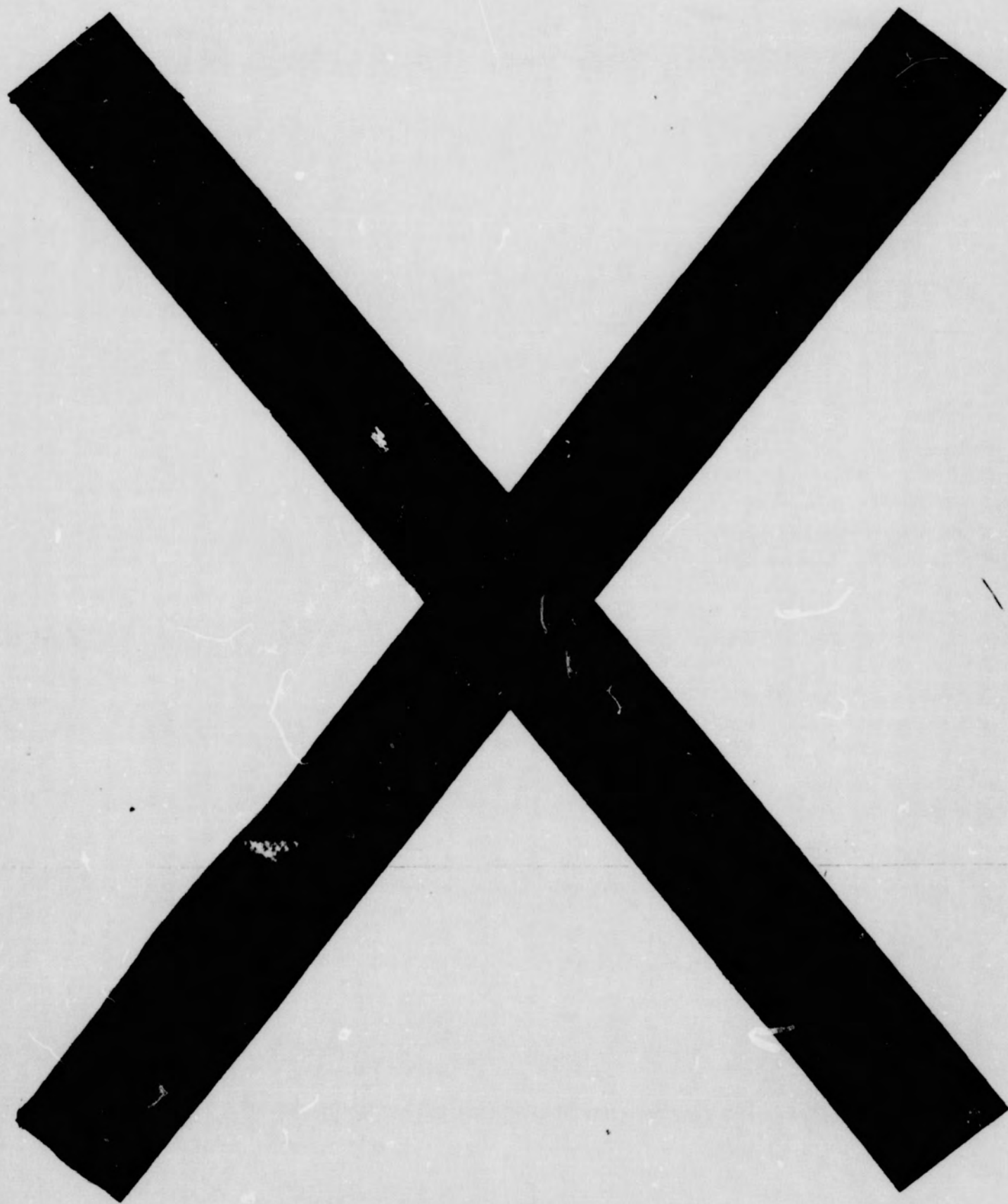
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Records: 335



STB

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This decision will be included in the bound volumes of the STB printed reports at a later date.

SURFACE TRANSPORTATION BOARD

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. 193

Decided: August 2, 2001

Environmental Condition No. 11 of Appendix Q of Decision No. 89¹ (Decision No. 89, slip op. at 401-03) 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."²

On May 24, 2001, NS provided us with a copy of a Negotiated Agreement between NS and Nicholas County, WV, dated May 3, 2001, and accepted by Nicholas County on May 16, 2001. According to NS, this Negotiated Agreement effectuates the Board's preference for privately negotiated solutions stated in Decision No. 89, slip op. at 153. NS requests that Environmental Condition No. 11 be amended to reflect the parties' Negotiated Agreement by

¹ In Decision No. 89, served July 23, 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 by Norfolk Southern Corporation and Norfolk Southern Railway Company (collectively, NS). CSX and NS are referred to as Applicants.

² Environmental Condition No. 11 required compliance with this provision within 2 years of the effective date of Decision No. 89, or by August 22, 2000. At the request of NS, by decision served on August 22, 2000, the compliance deadline in Environmental Condition No. 11 was extended 1 year until August 22, 2001, to allow NS to complete implementation of the condition through additional negotiated solutions with communities and an individualized noise mitigation program.

deleting the Nicholas County receptor from the receptors identified on the Fola Mine, WV, to Deepwater, WV line segment (N-111),³ and that the Negotiated Agreement between NS and Nicholas County be added to the NS Subsection of Environmental Condition No. 51 of Appendix Q in Decision No. 89, which requires NS 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, slip op. at 420-21. Nicholas County concurs with the request.

In view of the Negotiated Agreement between NS and Nicholas County, WV, 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 the receptor in Nicholas County from the receptors identified on the Fola Mine-Deepwater, WV line segment because the noise mitigation for that community has been superseded by the NS/Nicholas County 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 NS and Nicholas County, WV, dated May 3, 2001, and accepted by Nicholas County on May 16, 2001, the following is added to the NS Subsection of Environmental Condition No. 51 of Appendix Q of Decision No. 89:

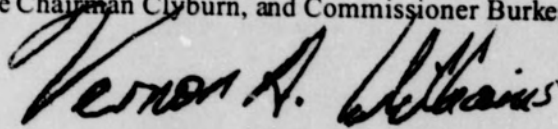
29. Nicholas County, West Virginia, Negotiated Agreement dated May 3, 2001, and accepted by Nicholas County on May 16, 2001.

3. In addition, Environmental Condition No. 11 of Appendix Q of Decision No. 89 is amended to delete the receptor in Nicholas County from the receptors identified on the Fola Mine-Deepwater, WV line segment because the noise mitigation for that community has been superseded by the Negotiated Agreement.

³ Environmental Condition No. 11 does not specifically reference Nicholas County. However, the noise receptor in Nicholas County is located outside the incorporated limits of the Town of Gauley Bridge, near Summersville. Accordingly, NS negotiated a separate agreement with Nicholas County. The Negotiated Agreement between NS and the Town of Gauley Bridge was addressed in Decision No. 190, served on July 6, 2001.

4. This decision is effective on the date of service.

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

A handwritten signature in dark ink, appearing to read "Vernon A. Williams". The signature is written in a cursive, flowing style with some capitalization.

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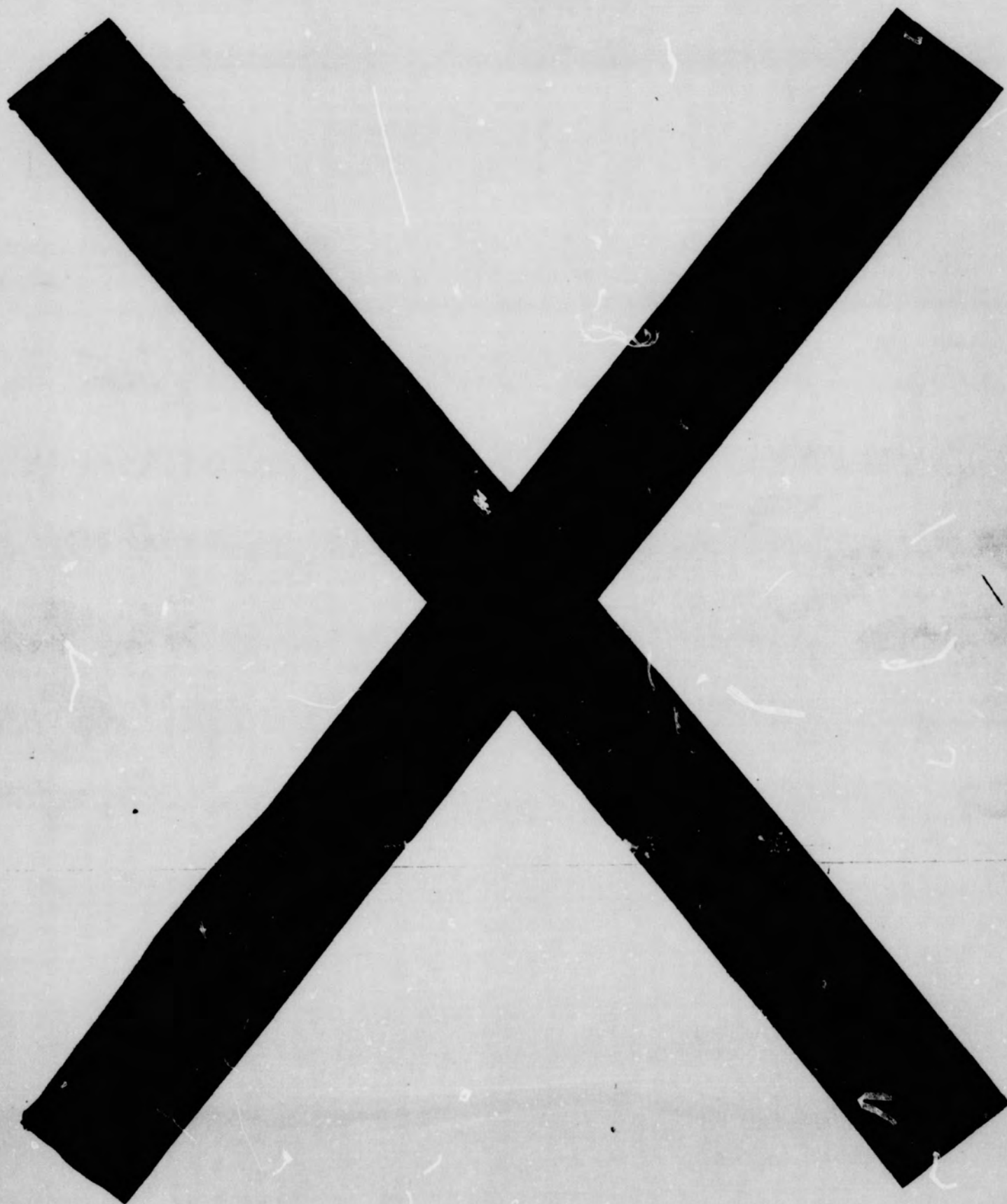
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STB

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SERVICE DATE - AUGUST 3, 2001

This decision will be included in the bound volumes of the STB printed reports at a later date.

SURFACE TRANSPORTATION BOARD

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. 194

Decided: August 2, 2001

Environmental Condition No. 11 of Appendix Q of Decision No. 89¹ (Decision No. 89, slip op. at 401-03) 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."²

On June 26, 2001, NS provided us with a copy of a Negotiated Agreement between NS and Rockingham County, VA, dated May 30, 2001, and accepted by Rockingham County on June 19, 2001. According to NS, this Negotiated Agreement effectuates the Board's preference for privately negotiated solutions stated in Decision No. 89, slip op. at 153. NS requests that Environmental Condition No. 11 be amended to reflect the parties' Negotiated Agreement by

¹ In Decision No. 89, served July 23, 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 by Norfolk Southern Corporation and Norfolk Southern Railway Company (collectively, NS). CSX and NS are referred to as Applicants.

² Environmental Condition No. 11 required compliance with this provision within 2 years of the effective date of Decision No. 89, or by August 22, 2000. At the request of NS, by decision served on August 22, 2000, the compliance deadline in Environmental Condition No. 11 was extended 1 year until August 22, 2001, to allow NS to complete implementation of the condition through additional negotiated solutions with communities and an individualized noise mitigation program.

deleting the Rockingham County receptors from the receptors identified on the Riverton Junction, VA, to Roanoke, VA line segment (N-100),³ and that the Negotiated Agreement between NS and Rockingham County be added to the NS Subsection of Environmental Condition No. 51 of Appendix Q in Decision No. 89, which requires NS 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, slip op. at 420-21. Rockingham County concurs with the request.

In view of the Negotiated Agreement between NS and Rockingham County, VA, 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 the receptors in Rockingham County from the receptors identified on the Riverton Junction-Roanoke, VA line segment because the noise mitigation for that community has been superseded by the NS/Rockingham County 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 NS and Rockingham County, VA, dated May 30, 2001, and accepted by Rockingham County on June 19, 2001, the following is added to the NS Subsection of Environmental Condition No. 51 of Appendix Q of Decision No. 89:

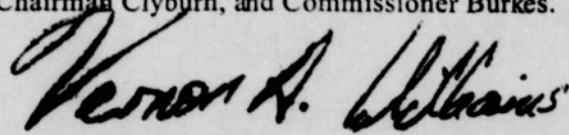
30. Rockingham County, Virginia, Negotiated Agreement dated May 30, 2001, and accepted by Rockingham County on June 19, 2001.

3. In addition, Environmental Condition No. 11 of Appendix Q of Decision No. 89 is amended to delete the receptors in Rockingham County from the receptors identified on the Riverton Junction-Roanoke, VA line segment because the noise mitigation for that community has been superseded by the Negotiated Agreement.

³ Environmental Condition No. 11 does not specifically reference Rockingham County. However, two of the noise receptors in Rockingham County are located outside the incorporated limits of the Towns of Elkton, Grottoes, and Lynnwood, near Port Republic. Accordingly, NS negotiated a separate agreement with Rockingham County. Negotiated Agreements between NS and the Towns of Elkton and Grottoes were addressed in Decision Nos. 178 and 185, served on February 14, 2001, and April 20, 2001, respectively.

4. This decision is effective on the date of service.

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

A handwritten signature in dark ink, appearing to read "Vernon A. Williams". The signature is written in a cursive, flowing style with a large initial "V".

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Secretary

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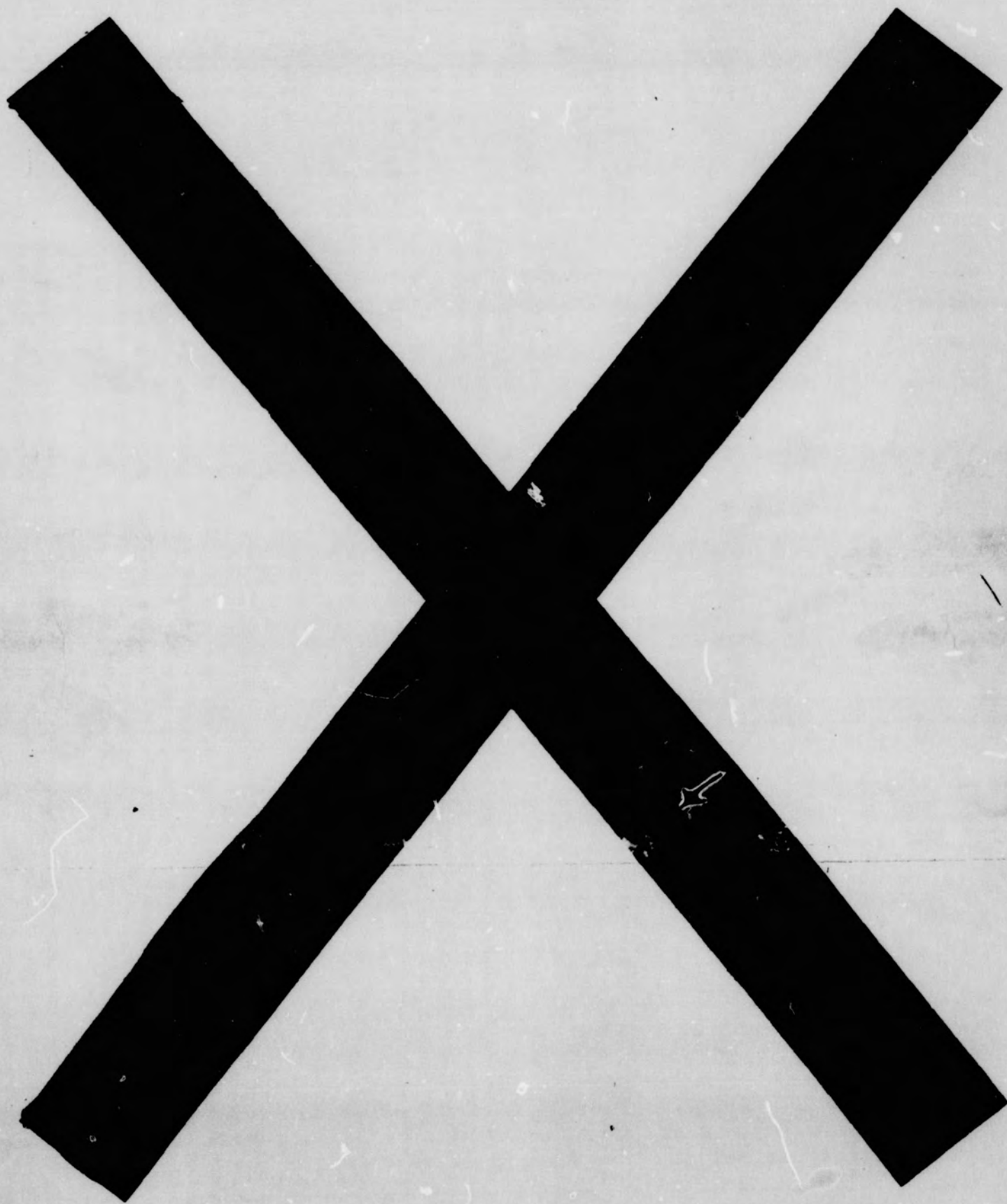
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NEWS

FOR RELEASE
Wednesday, August 1, 2001
No. 01-34

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**COURT OF APPEALS SUMMARILY UPHOLDS
SURFACE TRANSPORTATION BOARD'S HANDLING OF
"INDIANAPOLIS POWER & LIGHT" ISSUE IN BOARD'S OVERSIGHT OF
THE "CONRAIL MERGER"**

Surface Transportation Board (Board) Chairman Linda J. Morgan announced today that the United States Court of Appeals for the District of Columbia Circuit has summarily upheld the Board's handling of certain issues raised by Indianapolis Power & Light Company ("IP&L") in connection with the Board's annual oversight of the "CSX-NS-Conrail railroad transaction."

In that transaction, the CSX and Norfolk Southern (NS) rail systems acquired control of Conrail and divided its assets between them. The privately structured transaction, as proposed by the railroads and as approved by the Board, was a procompetitive restructuring of rail transportation throughout much of the eastern United States, resulting in new, two-railroad competition for thousands of shippers that had been previously served only by Conrail. The Board found that the transaction, which also produced new single-line service for many shippers, generally did not diminish competition. Nevertheless, the Board imposed numerous conditions to mitigate potential harm to particular shippers and other parties and, in some cases, to further

enhance the available competitive options. The Board also established an oversight process to ensure that its conditions are carried out and that they are effective.

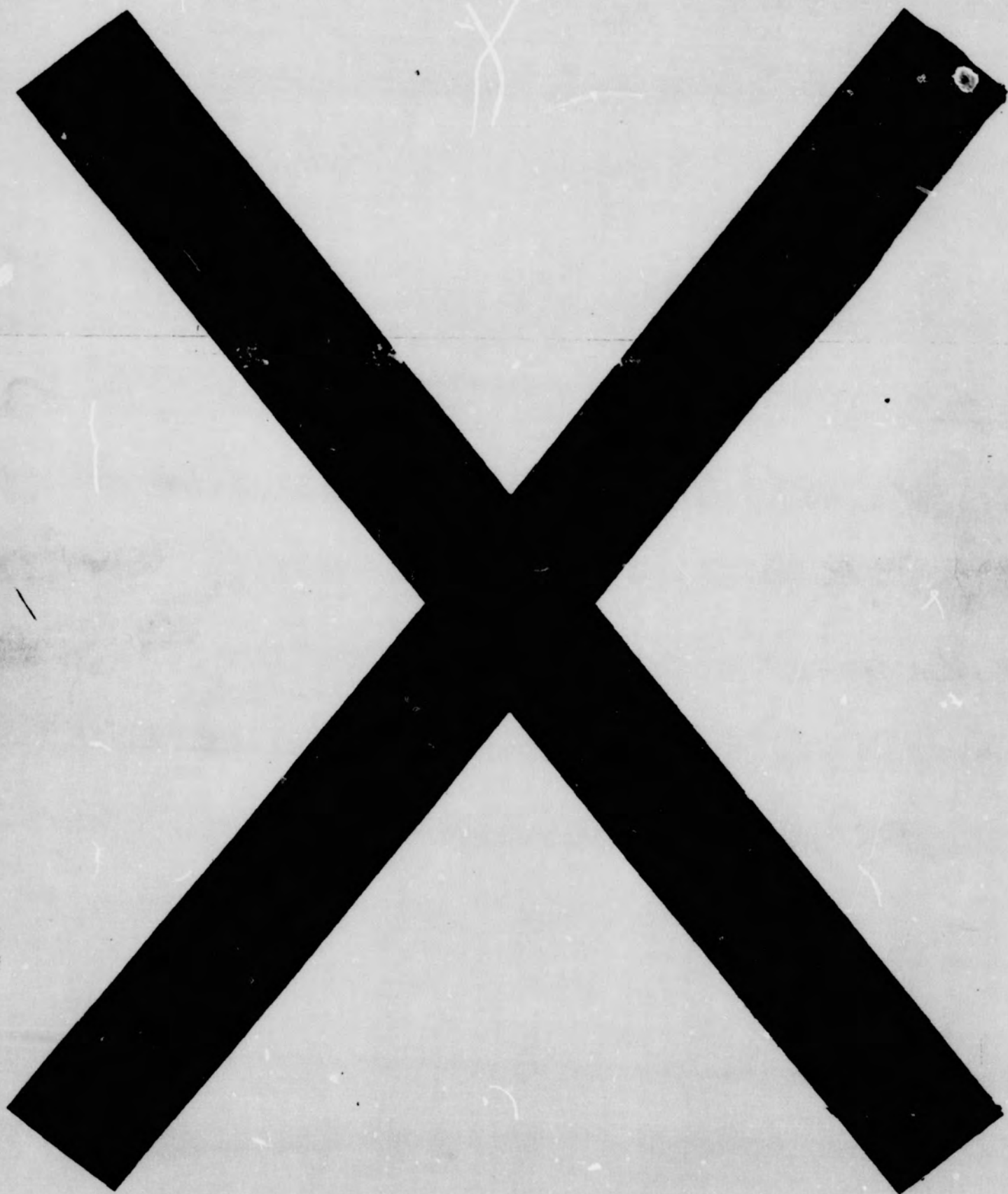
Nonetheless, various parties, including IP&L, challenged in court the Board's action approving the transaction. In a decision issued on April 25, 2001, the United States Court of Appeals for the Second Circuit affirmed the Board's decision in all respects in *Erie-Niagara Rail Steering Committee, et al. v. Surface Transportation Board*, 247 F.3d 437 (2d Cir. 2001). The Second Circuit rejected IP&L's argument that the Board did not do enough to preserve competition at IP&L's power plant in Indianapolis, finding that the Board's competition-preserving conditions, along with its post-merger monitoring through the oversight process, were adequate and that "any effort to craft additional conditions for IP&L is premature."

IP&L, however, had also challenged, in the United States Court of Appeals for the District of Columbia Circuit, a follow-up decision in the Board's Conrail oversight proceeding denying IP&L's renewed request for additional competition-preserving conditions beyond those the Board had originally imposed in approving the transaction. After the Second Circuit's ruling, CSX, NS, and the Board asked the D.C. Circuit to summarily affirm (decide the case without briefing or oral argument) the Board's decision on the ground that IP&L still has yet to test, and therefore has yet to establish any inadequacy in, the conditions that the Board provided for its benefit so as to warrant further relief. IP&L opposed the request, arguing that the proceeding raised important issues of first impression. The court agreed with CSX, NS, and the Board, finding that there was no basis for undoing the Board's action.

All pending court litigation regarding the Board's approval of the Conrail transaction is now resolved, with the Board's action having been upheld in all respects.

The court's decision was issued in *Indianapolis Power & Light Company v. Surface Transportation Board*, No. 01-1005 (D.C. Cir. July 26, 2001).

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The decision will be included in the bound volumes of the STB printed reports at a later date.

SURFACE TRANSPORTATION BOARD

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. 191

Decided: July 6, 2001

Environmental Condition No. 11 of Appendix Q of Decision No. 89¹ (Decision No. 89, slip op. at 401-03) 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."²

On May 10, 2001, CSX provided us with a copy of a Negotiated Agreement between CSX and Perrysburg Township, Wood County, OH, dated April 5, 2001, and accepted by Perrysburg Township on May 7, 2001. According to CSX, this Negotiated Agreement effectuates the Board's preference for privately negotiated solutions stated in Decision No. 89, slip op. at 153. CSX requests that Environmental Condition No. 11 be amended to reflect the

¹ In Decision No. 89, served July 23, 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 by Norfolk Southern Corporation and Norfolk Southern Railway Company (collectively, NS). CSX and NS are referred to as Applicants.

² Environmental Condition No. 11 required compliance with this provision within 2 years of the effective date of Decision No. 89, or by August 22, 2000. At the request of CSX, by decision served on August 22, 2000, the compliance deadline in Environmental Condition No. 11 was extended 1 year until August 22, 2001, to allow CSX to complete implementation of the condition through additional negotiated solutions with communities and an individualized noise mitigation program.

parties' Negotiated Agreement by deleting the Perrysburg Township receptor from the receptors identified on the Deshler, OH, to Toledo, OH line segment (C-065),³ and that the Negotiated Agreement between CSX and Perrysburg Township 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, slip op. at 420-21. Perrysburg Township concurs with the request.

In view of the Negotiated Agreement between CSX and Perrysburg Township, Wood County, OH, 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 the receptor in Perrysburg Township from the receptors identified on the Deshler to Toledo, OH line segment because the noise mitigation for that community has been superseded by the CSX/Perrysburg Township 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 Perrysburg Township, Wood County, OH, dated April 5, 2001, and accepted by Perrysburg Township on May 7, 2001, the following is added to the CSX Subsection of Environmental Condition No. 51 of Appendix Q of Decision No. 89:

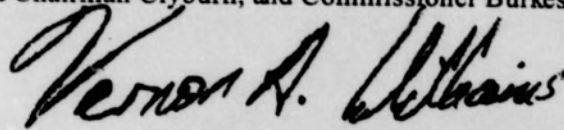
45. Perrysburg Township, Wood County, Ohio, Negotiated Agreement dated April 5, 2001, and accepted by Perrysburg Township on May 7, 2001.

3. In addition, Environmental Condition No. 11 of Appendix Q of Decision No. 89 is amended to delete the receptor in Perrysburg Township from the receptors identified on the Deshler to Toledo, OH line segment because the noise mitigation for that community has been superseded by the Negotiated Agreement.

³ Environmental Condition No. 11 does not specifically reference Perrysburg Township. However, one of the ten receptors that was identified within the City of Perrysburg is actually located in Perrysburg Township. Accordingly, CSX negotiated a separate agreement with Perrysburg Township. The Negotiated Agreement between CSX and the City of Perrysburg, OH, was addressed in Decision No. 172, served on October 13, 2000.

4. This decision is effective on the date of service.

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

A handwritten signature in dark ink, appearing to read "Vernon A. Williams". The signature is fluid and cursive, with the first name "Vernon" being the most prominent.

Vernon A. Williams
Secretary

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STB

FD-33388

7-11-01

C-192 31892

31892

SERVICE DATE - JULY 11, 2001

EB

This decision will be included in the bound volumes of the STB printed reports at a later date.

SURFACE TRANSPORTATION BOARD

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. 192

Decided: July 6, 2001

Environmental Condition No. 36(B) of Appendix Q of Decision No. 89¹ (Decision No. 89, slip op. at 414) requires NS, with the concurrence of the City of Oak Harbor, OH, to provide, install, and maintain a real-time train location monitoring system to improve local emergency response vehicle dispatching. Environmental Condition No. 36(B) further provides: "At a minimum, the system shall use appropriate technology to detect trains approaching the city on NS rail line segments N-079, N-077, N-294, and N-483 and shall display the train locations at an emergency response center to be specified by the City."

On May 21, 2001, NS provided us with a copy of a Negotiated Agreement between NS and the Village of Oak Harbor, OH, dated May 2, 2001, and accepted by the Village of Oak Harbor on May 15, 2001. According to NS, this Negotiated Agreement effectuates the Board's preference for privately negotiated solutions stated in Decision No. 89, slip op. at 153. In view of the Negotiated Agreement with the Village of Oak Harbor, NS requests that the Board issue an order providing that Environmental Condition No. 51 of Appendix Q of Decision No. 89 be amended by adding this Negotiated Agreement to the list of Negotiated Agreements entered into by NS, and that Environmental Condition No. 36(B) of Appendix Q of Decision No. 89 be superseded by the Negotiated Agreement. Environmental Condition No. 51 requires NS 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, slip op. at 420-21. The Village of Oak Harbor concurs with the request.

¹ In Decision No. 89, served July 23, 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 by Norfolk Southern Corporation and Norfolk Southern Railway Company (collectively, NS). CSX and NS are referred to as Applicants.

In view of the Negotiated Agreement between NS and the Village of Oak Harbor, OH, we will: (1) add the Negotiated Agreement to Environmental Condition No. 51 of Appendix Q of Decision No. 89; and (2) delete Environmental Condition No. 36(B) of Appendix Q of Decision No. 89, which has been superseded by the Negotiated Agreement.

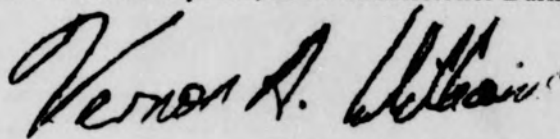
This action will not significantly affect either the quality of the human environment or the conservation of energy resources.

It is ordered:

1. This proceeding is reopened.
2. In accordance with the Negotiated Agreement between NS and the Village of Oak Harbor, OH, dated May 2, 2001, and accepted by the Village of Oak Harbor on May 15, 2001, the following is added to the NS Subsection of Environmental Condition No. 51 of Appendix Q of Decision No. 89:

28. Village of Oak Harbor, Ohio, Negotiated Agreement dated May 2, 2001, and accepted by the Village of Oak Harbor on May 15, 2001.
3. In addition, Environmental Condition No. 36(B) of Appendix Q of Decision No. 89 is deleted because the mitigation requirement for that condition has been superseded by the parties' Negotiated Agreement.
4. This decision is effective on the date of service.

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



Vernon A. Williams
Secretary

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STB

FD-33388

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This decision will be included in the bound volumes of the STB printed reports at a later date.

SURFACE TRANSPORTATION BOARD

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. 190

Decided: July 2, 2001

Environmental Condition No. 11 of Appendix Q of Decision No. 89¹ (Decision No. 89, slip op. at 401-03) 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."²

On May 9, 2001, NS provided us with a copy of a Negotiated Agreement between NS and the Town of Gauley Bridge, WV, dated April 27, 2001, and accepted by the Town of Gauley Bridge on May 2, 2001. According to NS, this Negotiated Agreement effectuates the Board's preference for privately negotiated solutions stated in Decision No. 89, slip op. at 153. NS requests that Environmental Condition No. 11 be amended to reflect the parties' Negotiated

¹ In Decision No. 89, served July 23, 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 by Norfolk Southern Corporation and Norfolk Southern Railway Company (collectively, NS). CSX and NS are referred to as Applicants.

² Environmental Condition No. 11 required compliance with this provision within 2 years of the effective date of Decision No. 89, or by August 22, 2000. At the request of NS, by decision served on August 22, 2000, the compliance deadline in Environmental Condition No. 11 was extended 1 year until August 22, 2001, to allow NS to complete implementation of the condition through additional negotiated solutions with communities and an individualized noise mitigation program.

Agreement by deleting the Town of Gauley Bridge receptors from those identified on the Fola Mine, WV, to Deepwater, WV line segment (N-111), and that the Negotiated Agreement between NS and the Town of Gauley Bridge be added to the NS Subsection of Environmental Condition No. 51 of Appendix Q in Decision No. 89, which requires NS 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, slip op. at 420-21. The Town of Gauley Bridge concurs with the request.

In view of the Negotiated Agreement between NS and the Town of Gauley Bridge, WV, 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 the receptors in the Town of Gauley Bridge from the receptors identified on the Fola Mine-Deepwater, WV line segment because the noise mitigation for that community has been superseded by the NS/Town of Gauley Bridge Negotiated Agreement.

This action will not significantly affect either the quality of the human environment or the conservation of energy resources.

It is ordered:

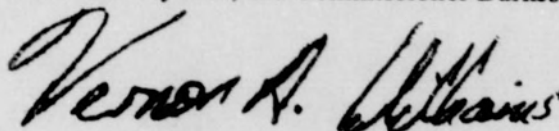
1. This proceeding is reopened.
2. In accordance with the Negotiated Agreement between NS and the Town of Gauley Bridge, WV, dated April 27, 2001, and accepted by the Town of Gauley Bridge on May 2, 2001, the following is added to the NS Subsection of Environmental Condition No. 51 of Appendix Q of Decision No. 89:

27. Town of Gauley Bridge, West Virginia, Negotiated Agreement dated April 27, 2001, and accepted by the Town of Gauley Bridge on May 2, 2001.

3. In addition, Environmental Condition No. 11 of Appendix Q of Decision No. 89 is amended to delete the receptors in the Town of Gauley Bridge from the receptors identified on the Fola Mine-Deepwater, WV line segment because the noise mitigation for that community has been superseded by the Negotiated Agreement.

4. This decision is effective on the date of service.

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

A handwritten signature in dark ink, appearing to read "Vernon A. Williams". The signature is written in a cursive, flowing style.

Vernon A. Williams
Secretary

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