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SERVICE DATE – DECEMBER 28, 2007

SURFACE TRANSPORTATION BOARD

DECISION

STB Docket No. AB-156 (Sub-No. 26X)

DELAWARE AND HUDSON RAILWAY COMPANY, INC., D/B/A CANADIAN PACIFIC RAILWAY COMPANY—ABANDONMENT EXEMPTION—IN ALBANY COUNTY, NY

Decided: December 27, 2007

Delaware and Hudson Railway Company, Inc., d/b/a Canadian Pacific Railway Company (D&H) filed a notice of exemption under 49 CFR 1152 Subpart F—Exempt Abandonments to abandon 1.98 +/- miles of rail line between mileposts A 6.95 +/- (in Colonie) and A 7.13 +/- and mileposts T 0.0 +/- and T 1.81 +/- (in Green Island), in Albany County, NY. Notice of the exemption was served and published in the Federal Register on June 1, 2007 (72 FR 30665-66).

The exemption was scheduled to become effective on July 3, 2007, unless stayed by the Board or a formal expression of intent to file an offer of financial assistance (OFA) under 49 U.S.C. 10904 and 49 CFR 1152.27(c)(2) was filed by June 11, 2007. On May 17, 2007, R. Freedman & Son, Inc. (Freedman), filed a formal expression of intent to file an OFA to acquire the line. This filing automatically stayed the effective date of the exemption for 10 days, until July 13, 2007.<sup>1</sup> Freedman simultaneously requested that D&H provide Freedman with the financial data and information prescribed in 49 CFR 1152.27(a) (requested information). By decision served on June 15, 2007, the 30-day time period for filing an OFA was tolled until August 20, 2007, and the effective date of the exemption was extended until August 30, 2007. By decision served on August 6, 2007, the deadline for OFAs to be filed was tolled until 30 days after D&H notified the Board that it had provided the requested information to Freedman, and the effective date of the abandonment exemption was postponed until 10 days after the new due date for OFAs.

In a letter filed on August 31, 2007, D&H indicated that it provided Freedman with the requested information, but explained that Freedman had requested additional information. D&H indicated that it would need additional time to comply with Freedman's additional request. In a decision served on September 27, 2007, the deadline for OFAs to be filed was tolled for an additional 30 days following notice by D&H that it had provided Freedman with additional information Freedman had requested, and the effective date of the exemption was further postponed until 10 days after the due date for OFAs. On November 1, 2007, D&H provided the additional requested information to Freedman, making the OFA due on November 30, 2007.

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<sup>1</sup> See 49 CFR 1152.27(c)(2)(i).

On November 30, 2007, Freedman filed an OFA under 49 U.S.C. 10904 and 49 CFR 1152.27 to purchase a portion of D&H's line proposed for abandonment. In a decision served on December 5, 2007, Freedman was found to be financially responsible and the effective date of the exemption authorizing abandonment was postponed to permit the OFA process to proceed. In the same decision, the Board made any request to establish the terms and conditions of the purchase price due on or before December 31, 2007 (December 31 deadline).

On December 21, 2007, Freedman and D&H jointly filed a petition for extension of the December 31 deadline, until March 31, 2008. The parties state that they have reached an agreement in principle concerning Freedman's acquisition of the rail line, and that the terms of the agreement reached call for the parties to close on the purchase transaction on or before March 31, 2008. In advance of that date, the parties indicate that they will complete the negotiation of formal transaction documents, conduct due diligence, and otherwise prepare for the transfer of ownership. The requested extension is reasonable and will be granted. Accordingly, the deadline for the parties to request the Board to establish terms and conditions of a purchase will be extended to March 31, 2008.

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

It is ordered:

1. The request to extend the time period for either party to request the Board to establish the terms and conditions of a purchase is granted.
2. If D&H and Freedman cannot agree on a purchase price, either party may request the Board to establish the terms and conditions of a purchase on or before March 31, 2008.
3. This decision is effective on its service date.

By the Board, Joseph H. Dettmar, Acting Director, Office of Proceedings.

Vernon A. Williams  
Secretary