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SERVICE DATE – NOVEMBER 12, 2008

SURFACE TRANSPORTATION BOARD

DECISION

STB Docket No. AB-156 (Sub-No. 23X)

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

Decided: November 12, 2008

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 a 9.14 +/- mile portion of railroad known as the Albany Main or the Voorheesville Running Track, between milepost 10.94 +/- and milepost 1.8 +/- in Albany County, NY. Notice of the exemption was served and published in the Federal Register on June 16, 2003 (68 FR 35774-75). The exemption was scheduled to become effective on July 16, 2003. In this decision, the Board is granting a request to extend the interim trail use negotiating period.

By decision and notice of interim trail use or abandonment (NITU) served on July 8, 2003, the proceeding was reopened and the exemption was made subject to interim trail use/rail banking, public use, and three environmental conditions.<sup>1</sup> A 180-day period was authorized to permit public use negotiations<sup>2</sup> and to permit the County of Albany, NY (County), to negotiate an interim trail use/rail banking agreement with D&H for the described line. The negotiating period under the NITU was extended several times. The latest extension expired on October 31, 2008.<sup>3</sup>

On October 31, 2008, the County filed a request to further extend the NITU negotiating period until December 31, 2008. The County Executive, Mr. Michael G. Breslin, states that there is only one issue remaining to be resolved before the negotiation process is finalized, and that another extension is needed to finalize the acquisition process. D&H filed a letter consenting to the extension request.

Where, as here, the carrier has not consummated the abandonment at the end of the previously imposed negotiating period and has indicated its willingness to continue negotiations by agreeing to an extension, the Board retains jurisdiction and the NITU negotiating period may

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<sup>1</sup> By decision served November 5, 2003, the section 106 historic preservation condition was removed; the two other imposed environmental conditions remain in effect.

<sup>2</sup> The 180-day public use negotiation period expired on January 12, 2004.

<sup>3</sup> The most recent extension of the negotiation period under the NITU was authorized by decision served on September 26, 2008.

be extended.<sup>4</sup> Under the circumstances, further extension of the negotiating period is warranted. See Birt v. STB, 90 F.3d 580, 588-90 (D.C. Cir. 1996); Grantwood Village v. Missouri Pac. R.R. Co., 95 F.3d 654, 659 (8th Cir. 1996). An extension of time will promote the establishment of trails and rail banking consistent with the National Trails System Act, 16 U.S.C. 1247(d). Accordingly, the NITU negotiating period will be extended from October 31, 2008, to December 31, 2008. Again, given the time that has elapsed since abandonment was authorized, the parties are urged to conclude their negotiations so that further extensions will not 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 County's request to extend the interim trail use negotiating period is granted.
2. The negotiating period under the NITU is extended to December 31, 2008.
3. This decision is effective on its date of service.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Anne K. Quinlan  
Acting Secretary

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<sup>4</sup> See Rail Abandonments—Supplemental Trails Act Procedures, 4 I.C.C.2d 152, 157-58 (1987).