

SURFACE TRANSPORTATION BOARD

DECISION

Docket No. AB 156 (Sub-No. 27X)

DELAWARE AND HUDSON RAILWAY COMPANY, INC.—DISCONTINUANCE OF TRACKAGE RIGHTS EXEMPTION—IN BROOME COUNTY, N.Y.; ESSEX, UNION, SOMERSET, HUNTERDON, AND WARREN COUNTIES, N.J.; LUZERNE, PERRY, YORK, LANCASTER, NORTHAMPTON, LEHIGH, CARBON, BERKS, MONTGOMERY, NORTHUMBERLAND, DAUPHIN, LEBANON, AND PHILADELPHIA COUNTES, PA.; HARFORD, BALTIMORE, ANNE ARUNDEL, AND PRINCE GEORGE’S COUNTIES, MD.; THE DISTRICT OF COLUMBIA; AND ARLINGTON COUNTY, VA.

Digest:<sup>1</sup> This decision establishes an effective date of June 15, 2015, for a verified notice of exemption filed by the Delaware and Hudson Railway Company, Inc., to discontinue trackage rights over approximately 670 miles of rail line, notice of which was published in the Federal Register on April 8, 2015.

Decided: April 16, 2015

On March 19, 2015, Delaware & Hudson Railway Company, Inc. (D&H) submitted a verified notice of exemption under 49 C.F.R. § 1152.50 to discontinue overhead and local trackage rights on approximately 670 miles of rail line owned and/or operated by Norfolk Southern Railway Company (NSR), Reading Blue Mountain and Northern Railroad Company, CSX Transportation, Consolidated Rail Corporation, Wilkes-Barre Connecting Railroad Company, Pocono Northeast Railway, Inc., and National Railroad Passenger Corporation. The lines over which the trackage rights exist are located in (1) Binghamton, N.Y.; (2) in Wilkes-Barre, Pa.; (3) between Hudson (Plains), Pa., and Buttonwood, Pa.; (4) between Sunbury, Pa., and Harrisburg, Pa.; (5) between Harrisburg and Potomac Yard, Va., via Perryville, Md.; (6) between Harrisburg and Philadelphia, Pa., via Reading, Pa.; (7) between Reading and Allentown, Pa.; (8) between Dupont, Pa., and Allentown; and (9) between Allentown and Oak Island, N.J.

Notice of this exemption was served and published in the Federal Register on April 8, 2015 (80 Fed. Reg. 18,937). That notice states that, provided no formal expression of intent to file an offer of financial assistance (OFA) to subsidize continued rail service is received, the exemption will become effective on May 8, 2015. That notice also notes, however, that the

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<sup>1</sup> The digest constitutes no part of the decision of the Board but has been prepared for the convenience of the reader. It may not be cited to or relied upon as precedent. Policy Statement on Plain Language Digests in Decisions, EP 696 (STB served Sept. 2, 2010).

Board expects to establish a later effective date by a separate decision. The Board will do so in this decision.

In its verified notice of exemption, D&H states that it intends to consummate the discontinuance of trackage rights in this matter on the date of implementation of the transaction in Norfolk Southern Railway—Acquisition & Operation—Certain Rail Lines of the Delaware & Hudson Railway, Docket No. FD 35873, an application filed on November 17, 2014, by NSR seeking Board approval for the acquisition of 282.55 miles of rail line owned by D&H known as the D&H South Lines. As of the date of issuance of this decision, the Board has not issued a final decision on NSR's application. However, pursuant to the current procedural schedule in that matter, a final decision is expected to be issued by May 15, 2015. If the transaction in that docket is approved, that approval would become effective on June 15, 2015. Notwithstanding the outcome of that decision, we will set the effective date of the discontinuance exemption in this matter as June 15, 2015, provided no formal expression of intent to file an OFA to subsidize continued rail service is received and unless the exemption is stayed pending reconsideration.<sup>2</sup> Petitions to stay that do not involve environmental issues and formal expressions of intent to file an OFA to subsidize continued rail service under 49 C.F.R. § 1152.27(c)(2)<sup>3</sup> will continue to be due by April 20, 2015, and petitions to reopen will continue to be due by April 28, 2015.

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

It is ordered:

1. Provided no formal expression of intent to file an OFA to subsidize continued rail service has been received, this exemption will be effective on June 15, 2015, unless stayed pending reconsideration.
2. This decision is effective on its service date.

By the Board, Acting Chairman Miller and Vice Chairman Begeman.

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<sup>2</sup> A copy of this decision will be served on the parties of record in Norfolk Southern Railway—Acquisition & Operation—Certain Rail Lines of the Delaware & Hudson Railway, Docket No. FD 35873.

<sup>3</sup> Each OFA must be accompanied by the filing fee, which currently is set at \$1,600. See 49 C.F.R. § 1002.2(f)(25).