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SERVICE DATE – JULY 3, 2007

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: July 2, 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 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.

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.¹ A 180-day period (until January 12, 2004) was authorized to permit public use negotiations 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 is scheduled to expire on July 6, 2007.²

On June 21, 2007, the County filed a request to further extend the NITU negotiating period and the public use condition for 180 days.³ The County states that additional time is needed to complete the acquisition process between the parties. D&H filed a reply opposing the County's request to extend the negotiating period for an additional 180 days. Instead, D&H requests that the Board approve one final extension, but only until October 4, 2007, for the parties to complete negotiations and to execute an agreement for sale of the subject property.

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

² The most recent extension of the negotiation period under the NITU was authorized by decision served on April 6, 2007.

³ The 180-day public use negotiation period provided in the July 8, 2003 decision was the maximum period permitted by statute. 49 U.S.C. 10905. The public use condition thus expired on January 12, 2004, and may not be renewed or extended. See Rail Abandonments—Public Use Conditions—Revisions, 8 I.C.C.2d 392 (1992).

D&H states that, in light of the considerable delays that have occurred to date, it does not believe that another 180-day extension is necessary or appropriate.

Where, as here, the carrier is willing to continue trail use negotiations, the NITU negotiating period may be extended.⁴ Under the circumstances, an extension of the NITU negotiating period is warranted and will promote the establishment of trail use and rail banking consistent with the National Trails System Act, 16 U.S.C. 1247(d) (Trails Act). Accordingly, the NITU negotiating period will be extended, but only until October 4, 2007.⁵

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 in part and the negotiating period is extended until October 4, 2007.
2. This decision is effective on its date of service.

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

Vernon A. Williams
Secretary

⁴ See Rail Abandonments–Supplemental Trails Act Procedures, 4 I.C.C.2d 152, 157-58 (1987).

⁵ Trail use/rail banking is voluntary and can be implemented only if an abandoning railroad agrees to negotiate an agreement. See section 8(d) of the Trails Act. Therefore, due to D&H's position here, the negotiating period may be extended only until October 4, 2007.