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SEA

SERVICE DATE – JUNE 6, 2007

SURFACE TRANSPORTATION BOARD
WASHINGTON, DC 20423

ENVIRONMENTAL ASSESSMENT

STB DOCKET NO. AB 156 (Sub No. 26X)

**Delaware and Hudson Railway Company --
Abandonment Exemption -- In Albany County, New York**

BACKGROUND

In this proceeding, Delaware and Hudson Railway Company (D&H) has filed a notice under 49 U.S.C. 10502 for an exemption from 49 U.S.C. 10903 for abandonment of approximately 1.98 miles of rail line (Line) located between milepost A 6.95 +/- (in Colonie, NY) and milepost A 7.13 and milepost T 0.0 +/- and milepost T 1.81 +/- (in Green Island, NY) in Albany County, NY. The Line proposed for abandonment traverses U.S. Postal Zip Codes 12183 and 12189. D&H also states that the Line does not contain any Federally granted rights-of-way.

A map depicting the Line in relationship to the area served is appended to this Environmental Assessment (EA). If the abandonment is approved, D&H states that it intends to remove the remaining rail, track material, and cross ties, which would either be recycled or disposed of in an appropriate manner.

DESCRIPTION OF THE LINE

In its notice, D&H states that predecessors of D&H, under perpetual lease from Rensselaer and Saratoga Railroad Company (R&S), operated this Line since May 1, 1871. The R&S merged with D&H by agreement dated May 1, 1944. D&H states that since 2001, the Line has been out of service and that any existing overhead traffic has long since been rerouted to other rail lines.

D&H states that the right-of-way averages 82 feet in width and passes through areas that are predominately urban industrial in nature through the Village of Green Island and the Town of Colonie, NY. D&H has identified three bridges that are 50 years old or older. No other structures on the Line proposed for abandonment are 50 years old or older.

If the abandonment is approved, D&H states that the Village of Green Island has indicated interest in purchasing the right-of-way for use in residential and economic redevelopment purposes.

ENVIRONMENTAL REVIEW

D&H has submitted an environmental and historic report that concludes that the quality of the human environment would not be significantly affected as a result of the abandonment or any post-abandonment activities. D&H has served the environmental and historic report on a number of appropriate Federal, state, and local agencies as required by the Surface Transportation Board's environmental rules at 49 CFR 1105.7(b). The Board's Section of Environmental Analysis (SEA) has investigated and reviewed the record in this proceeding.

As noted above, D&H states that no local rail traffic has moved over the Line since 2001 and that any overhead rail traffic has since been rerouted to other rail lines.

According to D&H, no known toxic waste areas are present within the right-of-way. In addition, D&H states that all batteries have been removed from the signal bungalows at the five at-grade crossings. Moreover, a Phase 1 Environmental Site Assessment (Assessment) was completed in October 2006. This Assessment found no "Recognized Environmental Conditions," meaning that the rail right-of-way was found to be free of toxic waste. D&H notes that there is a hazardous waste site proximate to the Line originating from a Ford Motor Company facility, which has been designated by the New York State Department of Environmental Conservation (DEC) as Site No. 401007. D&H states that it will consult with the DEC prior to the commencement of any work near that area. Therefore, SEA will recommend that the Board impose a condition requiring D&H to consult with the New York Department of Environmental Conservation to ensure that any concerns regarding D&H's salvage activities in the vicinity of the known Ford Motor Company hazardous waste site are addressed. Furthermore, D&H shall submit the results of these consultations in writing to the Board's Section of Environmental Analysis prior to the onset of salvage operations.

In a letter dated April 18, 2007, Mr. Angelo Marcuccio, Environmental Analyst, New York State Department of Environmental Conservation, Division of Environmental Permits, Region 4, states that the project, as proposed, would not require any permits from their office.

In a letter dated March 29, 2007, Ms. Mary Brizzell, Town of Colonie, submitted the following comments: 1) it is unclear what D&H means in its notice when it states that certain structures will remain in place to facilitate transit use; 2) it is also unclear who will be responsible for ownership and maintenance of said structures; 3) the EA should include an assessment of the potential impacts to businesses, including rail to truck diversions; 4) an investigation of potential contamination sites should be identified and remediated; 5) all equipment and materials should be properly disposed at an off-site regulated facility; and 6) the EA should identify potential impacts to other connecting rail lines or spurs.

To respond to the Town's questions regarding statements from D&H's notice seeking abandonment authority, SEA will recommend that the Board impose a condition requiring D&H to consult with the Town of Colonie, NY, prior to commencement of salvage activities, in order to clarify and discuss the Town's concerns regarding D&H's proposed abandonment. In response to the Town's concerns regarding rail to truck diversions, as noted above, no traffic has moved over the Line proposed for abandonment since 2001; therefore, no rail to truck diversion would

occur should the Board grant abandonment authority. Whether other environmental impacts may result to businesses in the Town should this abandonment be granted is addressed below.

In a letter dated March 28, 2007, Ms. Ellen McNulty-Ryan, Mayor, Village of Green Island, submitted the following comments: 1) the abandonment will positively impact their land use plans providing more than three acres for residential and economic redevelopment and 2) elimination of the Line can only enhance impacts to water quality, air quality, noise, and pair of nesting bald eagles located within its boundaries.

D&H states that it will not remove any of the three existing bridges and as such will not engage in any in-stream salvage activities. Therefore, the proposed abandonment would not require the issuance of any permits under Section 402 of the Clean Water Act.

The U.S. Department of Commerce, National Geodetic Survey (NGS) has not completed its review of the proposed abandonment. Therefore, SEA has added NGS to the service list for this EA and specifically invites NGS's comments on this EA.

If the abandonment is approved, D&H states that it intends to salvage the rail line. D&H states that salvage operations will normally be confined to the right-of-way and, as such, would be highly unlikely to involve major excavation.

In a letter dated May 17, 2007, R. Freedman & Sons, Green Island, NY, has formally filed a notice of intent to submit an appropriate offer of financial assistance to acquire the Line as identified.

HISTORIC REVIEW

D&H states that the Rensselaer and Saratoga Railroad Company (R&S) originally owned the Line proposed to be abandoned, incorporated April 14, 1832, to construct a railroad between Troy, NY, and Ballston Spa, NY. The railroad opened in 1835. The Line proposed for abandonment was a part of the original main line route of the R&S.

This line of railroad was operated by R&S until 1871, and since by predecessors of the Delaware and Hudson Railway Company, Inc., under a perpetual lease dated May 1, 1871. The R&S merged with D&H by an agreement of merger dated May 1, 1944.

In 1978, a portion of the line to the north of this segment was abandoned between the City of Cohoes, NY, to the Village of Waterford, NY. Shortly afterward, the single remaining customer located in the City of Cohoes ceased rail service. Subsequently, the section of rail line from the Village of Green Island to Ontario Street in the City of Cohoes was abandoned in STB Docket No. AB-156 Sub No. 24X in 2004.

D&H has identified three bridge structures that are 50 years old or older. Two of the bridge structures are located within the Town of Colonie and the third between the Town of Colonie and the Village of Green Island. D&H further states that it has limited historic documentation within its possession.

D&H submitted an historic report as required by the Board's environmental rules [49 CFR 1105.8(a)] and served the report on the New York State Office of Parks, Recreation and Historic Preservation (State Historic Preservation Office or SHPO) pursuant to 49 CFR 1105.8(c). In a letter dated April 2, 2007, the SHPO has submitted comments in response to the historic report stating that, based on the available information, no historic properties listed in or eligible for inclusion in the National Register of Historic Places (National Register) would be affected within the right-of-way (the Area of Potential Effect, or APE) of the proposed abandonment.

Pursuant to the Section 106 regulations of the National Historic Preservation Act at 36 CFR 800.4(d)(1), we have determined, in consultation with the SHPO that the proposed abandonment would not affect historic properties listed in or eligible for inclusion in the National Register. The documentation for this finding, as specified at 36 CFR 800.11(d), consists of the D&H's historic report, all relevant correspondence, and this EA, which have been provided to the SHPO and made available to the public through posting on the Board's web site at <http://www.stb.dot.gov>.

SEA conducted a search of the Native American Consultation Database at <http://home.nps.gov/nacd/> to identify Federally recognized tribes that may have ancestral connections to the project area. The database indicated that there are no tribes that may have an interest in the proposed abandonment.

CONDITIONS

- 1. The Delaware and Hudson Railway Company shall consult with the New York Department of Environmental Conservation prior to the commencement of any salvage activities to ensure that any concerns related to the adjacent Ford Motor Company hazardous waste site are addressed. Furthermore, the Delaware and Hudson Railway Company shall submit the results of these consultations in writing to the Board's Section of Environmental Analysis prior to the onset of salvage operations.**
- 2. The Delaware and Hudson Railway Company shall consult with the Town of Colonie, NY, prior to commencement of salvage activities, in order clarify and discuss the Town's concerns regarding the Delaware and Hudson's proposed abandonment.**
- 3. The Delaware and Hudson Railway Company shall consult with the National Geodetic Survey (NGS) prior to beginning salvage activities. If NGS identifies geodetic station markers that may be affected by the proposed abandonment, the Delaware and Hudson Railway Company shall notify NGS at least 90 days prior to beginning salvage activities in order to plan for the possible relocation of the geodetic station markers by NGS.**

CONCLUSIONS

Based on the information provided from all sources to date, SEA concludes that, as currently proposed, abandonment of the Line would not significantly affect the quality of the human environment. Therefore, the environmental impact statement process is unnecessary. SEA is providing a copy of this EA to the following agencies for review and comment: USEPA Region 2; USFWS Region 5; U.S. Army Corps of Engineers, New York District; U.S. Department of Agriculture, Natural Resources Conservation Service; and the U.S. Department of Commerce, National Geodetic Survey.

Alternatives to the proposed discontinuance would include denial (and therefore no change in operations) or and continued operation by another operator. In any of these cases, the existing quality of the human environment and energy consumption should not be affected.

PUBLIC USE

D&H states that the right-of-way is suitable for alternative use and that the Village of Green Island has indicated an interest in purchasing the right-of-way for residential and economic redevelopment.

A request containing the requisite four-part showing for imposition of a public use condition use condition (49 CFR 1152.28) must be filed with the Board and served on the railroad within the time specified in the Federal Register notice.

TRAILS USE

A request for a notice of interim trail use (NITU) is due to the Board, with a copy to the railroad, within 10 days of publication of the notice of the petition for exemption in the Federal Register. Nevertheless, the Board will accept late-filed requests as long as it retains jurisdiction to do so in a particular case. This request must comply with the Board's rules for use of rights-of-way as trails (49 CFR 1152.29).

PUBLIC ASSISTANCE

The Board's Office of Public Services responds to questions regarding interim trail use, public use, and other reuse alternatives. You may contact the Office of Public Services directly at (202) 245-0230, or mail inquiries to Surface Transportation Board, Office of Public Services, Washington, DC 20423.

COMMENTS

If you wish to file comments regarding this environmental assessment, you should send an **original and two copies** to the Surface Transportation Board, Case Control Unit, Washington, DC 20423, to the attention of Troy Brady, who prepared this environmental assessment. Environmental comments may also be filed electronically on the Board's website, www.stb.dot.gov, by clicking on the "E-Filing" link. **Please refer to STB Docket No. AB-156 (Sub No. 26X) in all correspondence addressed to the Board.** If you have questions regarding this environmental assessment, please contact Troy Brady, the environmental contact for this case, by phone at (202) 245-0301, fax at (202) 245-0454, or e-mail at Troy.Brady@stb.dot.gov.

Date made available to the public: June 6, 2007.

Comment due date: June 21, 2007.

By the Board, Victoria J. Rutson, Chief, Section of Environmental Analysis.

Vernon A. Williams
Secretary

Attachment