

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 12, 2005

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 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.² The negotiating period under the NITU was extended numerous times, the latest of which expired on July 9, 2005.³

On July 5, 2005, the County filed a request to further extend the NITU negotiating period through January 9, 2006.⁴ The County states that its anticipated grant award from the New York State Office of Parks, Recreation, and Historic Preservation for funding assistance

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 public use condition expired on January 12, 2004.

³ The most recent extension of the negotiation period under the NITU was authorized by decision served on January 11, 2005.

⁴ Although the request slightly exceeds the customary request of 180 days, the Board has granted such requests in the past. See, e.g., Southern Pacific Transportation Company—Abandonment Exemption—In Jackson, Victoria and Wharton Counties, TX, Docket No. AB-12 (Sub-No. 162X) (STB served May 29, 1996).

was confirmed by the Governor's Office. The County added that the Board of Directors of Scenic Hudson Land Trust, Inc., its partner in this initiative, has agreed to provide the local share of the grant award and that it and D&H have reached an accord on the market value for the rail corridor. The County further states that the parties, through their respective counsels, are working to resolve contractual language, including issues relating to various easements, leases, and encroachments along the corridor. The County avers that it needs the requested extension to complete the acquisition process with D&H. D&H advised the Board that it agrees 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 trail use negotiations, the Board retains jurisdiction and the NITU negotiating period may be extended. Under the circumstances, an 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), cert. denied, 519 U.S. 1149 (1997). Accordingly, the NITU negotiating period will be extended to January 9, 2006.

This action 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 interim trail use negotiating period is granted.
2. The negotiating period under the NITU is extended until January 9, 2006.
3. This decision is effective on its date of service.

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

Vernon A. Williams
Secretary