

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 13, 2006

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 of which expired on July 9, 2006.²

On July 3, 2006, the County filed a request to further extend the NITU negotiating period and the public use condition through October 9, 2006.³ The County states that additional time is needed because the parties have continued negotiations toward conveyance of the subject rail corridor, but progress has been interrupted by the turnover of key personnel on both sides of the negotiations table, resulting in delays that precluded their ability to

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 February 21, 2006.

³ The 180-day public use negotiation period, however, is the maximum period permitted by statute. 49 U.S.C. 10905. The public use condition 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).

finalize the proposed conveyance. The County requests an extension to complete the acquisition process between the parties. D&H advised the Board that it consents 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 requesting an extension, the Board retains jurisdiction and the NITU negotiating period may be extended. 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). Accordingly, the NITU negotiating period will be extended to October 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 October 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