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SERVICE DATE – APRIL 8, 2008

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: April 7, 2008

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 was authorized to permit public use negotiations² 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 expired on April 2, 2008.³

On March 27, 2008, the County filed a request to further extend the NITU negotiating period for 180 days, until September 29, 2008. The County states that, although the parties have made substantial progress, additional time is needed to complete the acquisition process. On March 28, 2008, D&H filed a letter consenting 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 agreeing to an extension, the Board retains jurisdiction and the NITU negotiating period may

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 180-day public use negotiation period expired on January 12, 2004.

³ The most recent extension of the negotiation period under the NITU was authorized by decision served on October 4, 2007.

be extended.⁴ Under the circumstances, 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 from April 2, 2008, to September 29, 2008. Again, given the time that has elapsed since abandonment was authorized, the parties are urged to conclude their negotiations so that further extensions will not be necessary.

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.
2. The negotiating period under the NITU is extended to September 29, 2008.
3. This decision is effective on its date of service.

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

Anne K. Quinlan
Acting Secretary

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