

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: January 11, 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 January 10, 2005.³

On January 7, 2005, the County filed a request to further extend the NITU negotiating period through July 9, 2005. The County states that it has continued discussions with representatives of D&H regarding acquisition of the corridor and has just recently received the findings of an independent appraisal of the corridor. The County adds that it anticipates a decision in the near future on a pending grant request made to the New York State Office of Parks, Recreation, and Historic Preservation for funding assistance through the State

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 August 5, 2004.

Environmental Protection Fund and Land & Water Conservation Fund. The County avers that it needs the requested extension to confirm the status of its grant request for funding assistance and to complete negotiations 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 July 9, 2005.

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 July 9, 2005.
3. This decision is effective on its date of service.

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

Vernon A. Williams
Secretary