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SEA

SERVICE DATE – SEPTEMBER 11, 2009

SURFACE TRANSPORTATION BOARD
WASHINGTON, DC 20423

ENVIRONMENTAL ASSESSMENT

STB DOCKET NO. AB-286 (Sub-No. 6X)

**The New York, Susquehanna, and Western Railway
Corporation – Abandonment Exemption – in
Oneida County, NY**

BACKGROUND

In this proceeding, the New York, Susquehanna and Western Railway Corporation (NYS&W) filed a notice of exemption under 49 CFR 1152.50 seeking exemption from the requirements of 49 U.S.C. 10903 in connection with the abandonment of a line of railroad in Oneida County, Utica, NY. The line, known as the Fay Street Branch, extends 0.42 miles from milepost 284.80, at or near Oswego Street, to milepost 285.22, at or near Warren Street (the Line). A map depicting the rail line in relationship to the area served is appended to this Environmental Assessment (EA). If the notice becomes effective, the railroad will be able to salvage track, ties and other railroad appurtenances and dispose of the right-of-way.

DESCRIPTION OF THE LINE

According to NYS&W, the Line was once part of the New York, Ontario and Western Utica Branch (NYO&W). The NYO&W was liquidated in 1957 and then acquired by the Delaware Lackawanna & Western Railroad. The Line eventually changed ownership to Conrail. NYS&W purchased the Line from Conrail, along with other lines, in 1982.

The Line right-of-way is 100 feet in width and contains no bridges, culverts, or other structures. The Line is located in an urban setting within the city of Utica and includes a mixture of residential, industrial and business uses.

NYS&W suggests that the Line could be suitable for other public purposes, including roads or highways, other forms of mass transportation, conservation, energy production or recreation. NYS&W states that the Line contains no Federally granted right-of-way.

According to NYS&W, there are currently no shippers on the Line, and there has been no freight service on the Line for 15 years. Accordingly, the proposed abandonment would not adversely impact the development, use and transportation of energy resources or recyclable commodities; transportation of ozone-depleting materials; or result in the diversion of rail traffic to truck traffic that could result in significant impacts to air quality or the local transportation network.

ENVIRONMENTAL REVIEW

NYS&W submitted an environmental report that concludes the quality of the human environment would not be affected significantly as a result of the abandonment or any post-abandonment activities, including salvage and disposition of the right-of-way. NYS&W served the environmental report on a number of appropriate Federal, state, and local agencies as required by the Surface Transportation Board's (Board) environmental rules [49 CFR 1105.7(b)].¹ The Board's Section of Environmental Analysis (SEA) has reviewed and investigated the record in this proceeding.

Impacts from salvage and disposal of a rail line typically include removal of tracks and ties, removal of ballast, dismantling of bridges or other structures that may be present on the rail right-of-way. Salvage may be performed within the right-of-way, or, if necessary, via the construction of new access points to the right-of-way. NYS&W states that, in this case, it intends to salvage the track materials including rails and ties, but will likely leave the roadbed intact.

NYS&W received written notice from the New York Department of Transportation (NYDOT) regarding the proposed abandonment. NYDOT indicated that it is not aware of any detrimental impacts that the proposed action would have on the environment. NYDOT also stated that it believes the project corridor would be a good candidate for future transportation use and requests that it continue to be updated regarding the progress of the proposed abandonment. We will ensure that NYDOT is added to our service list and be sent a copy of this EA.

The U.S. Fish and Wildlife Service (FWS) has provided comments to NYS&W indicating that due to increased work load that it would not be able to reply to the railroad's request for an endangered species list in a timely fashion. Instead, FWS recommended that the railroad consult its web site for any potential species. Through the FWS website, NYS&W identified two Federally listed species that are known to occur within the area of the proposed abandonment: the Indiana bat (*Myotis sodalis*), a Federally listed endangered species, and the Bog turtle (*Clemmys muhlenbergii*), a threatened species. SEA therefore recommends that a condition be imposed requiring the railroad to contact FWS prior to beginning salvage activities regarding potential impacts to these specific Federally listed endangered and threatened species.

The New York Office of Coastal, Local Government and Community Sustainability has indicated to NYS&W that the proposed abandonment would not require consistency certification pursuant to the Coastal Zone Management Act, 16 U.S.C. 1451 et seq.

¹ The railroad's environmental and historic reports are available for viewing on the Board's Website at <http://www.stb.dot.gov> by conducting a search for AB-286 (Sub-No. 6X) within "Filings" under "E-Library."

The New York Department of Environment and Conservation (DEQ), Division of Environmental Permits, Region 6, has indicated to NYS&W that there are no regulated streams or freshwater wetlands in the project area and that no state or local permits would be required. DEQ also stated that no park or forest lands would be impacted. DEQ did note that a portion of the project area is immediately adjacent to the Bossart State Superfund Site but that all remedial work had been done at the site and that salvage activities planned following abandonment approval, such as the removal of rails and ties, should have no adverse environmental impacts. We will ensure that DEQ receives a copy of this EA for its review and comment.

Based on all information available to date, SEA does not believe that salvage activities would cause significant environmental impacts. No comments have been received from the U.S. Environmental Protection Agency, the U.S. Army Corps of Engineers, or the U.S. Natural Resources Conservation Service regarding the proposed abandonment. Accordingly, copies of the EA will be provided to these and other Federal, local and state agencies for their review and comment.

HISTORIC REVIEW

NYS&W 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 Historic Preservation Office (SHPO), pursuant to 49 CFR 1105.8(c). No response has yet been received from the SHPO regarding any potential affects, if any, the abandonment could have on properties listed in or eligible for inclusion in the National Register of Historic Places (National Register). Accordingly, we are recommending a condition requiring the railroad to retain its interest in and take no steps to alter the historic integrity of all historic properties including sites, buildings, structures and objects within the project right-of-way (the Area of Potential Effect) eligible for listing or listed in the National Register until completion of the Section 106 process.

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 identified the Oneida Nation of New York as potentially having an interest in the proposed abandonment. A copy of the EA will be sent to the tribe for its comment and review.

Guidance regarding the Board's historic preservation review process is available on the Board's website at <http://www.stb.dot.gov/stb/environment/preservation.html>.

CONDITIONS

SEA recommends that the following environmental conditions be imposed on any decision granting abandonment authority:

1. Prior to the commencement of any salvage activities, the New York, Susquehanna and Western Railway Corporation (NYS&W) shall consult with the U.S. Fish and Wildlife Service (USFWS) to determine if the proposed abandonment could adversely impact habitat of the Indiana bat (*Myotis sodalis*), a Federally listed endangered species, or the Bog turtle (*Clemmys muhlenbergii*), a threatened species. (NYS&W) shall report the results of this consultation in writing to the Board's Section of Environmental Analysis prior to the onset of salvage activities.
2. The New York, Susquehanna and Western Railway Corporation (NYS&W) shall retain its interest in and take no steps to alter the historic integrity of all historic properties including sites, buildings, structures, and objects within the project right-of-way (the Area of Potential Effect) that are eligible for listing or listed in the National Register of Historic Places until the Section 106 process of the National Historic Preservation Act, 16 U.S.C. 470f, has been completed. NYS&W shall report back to the Section of Environmental Analysis regarding any consultations with the New York State Historic Preservation Office and the public. NYS&W may not file its consummation notice or initiate any salvage activities related to abandonment (including removal of tracks and ties) until the Section 106 process has been completed and the Board has removed this condition.

CONCLUSIONS

Based on the information provided from all sources to date, SEA concludes that, as currently proposed, and if the recommended conditions are imposed, abandonment of the Line will not significantly affect the quality of the human environment. Therefore, the environmental impact statement process is unnecessary.

Alternatives to the proposed abandonment would include denial (and therefore no change in operations), discontinuance of service without abandonment, 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

Following abandonment and salvage of the rail line, the right-of-way may be suitable for other public use. A request containing the requisite four-part showing for imposition of a public 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 Assistance, Governmental Affairs, and Compliance (OPAGAC) responds to questions regarding interim trail use, public use, and other reuse alternatives. You may contact OPAGAC directly at (202) 245-0230, or mail inquiries to Surface Transportation Board, Office of Public Assistance, Governmental Affairs, and Compliance, Washington, DC 20423.

COMMENTS

If you wish to file comments regarding this EA, send an **original and two copies** to Surface Transportation Board, Case Control Unit, Washington, DC 20423, to the attention of Catherine Glidden, who prepared this EA. Environmental comments may also be filed electronically on the Board's web site, www.stb.dot.gov, by clicking on the "E-FILING" link. **Please refer to Docket No. AB-286 (Sub-No. 6X) in all correspondence, including e-filings, addressed to the Board.** If you have any questions regarding this EA, please contact Catherine Glidden, the environmental contact for this case, by phone at (202) 245-0293, fax at (202) 245-0454, or e-mail at gliddenc@stb.dot.gov.

Date made available to the public: September 11, 2009.

Comment due date: September 28, 2009.

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

Anne K. Quinlan
Acting Secretary

Attachment